United States Court of Appeals
for the Second Circuit

APPELLANT'S APPENDIX

77-1175

To be argued by
JURIS G. CEDERBAUMS

B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

- v -

FRANCOIS CHIAPPE,

Appellant.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE EASTERN
DISTRICT OF NEW YORK

APPENDIX FOR APPELLANT FRANCOIS CHIAPPE

UNITED STATES COURT OF APPEALS
FILED
MAY 6 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JURIS G. CEDERBAUMS
Attorney for Appellant,
Francois Chiappe
30 Broad Street
New York, New York 10004
(212) 425-1060

PAGINATION AS IN ORIGINAL COPY

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

-------------------------------------X

UNITED STATES OF AMERICA,

Appellee

-against-

FRANCOIS CHIAPPE and
MIGUEL RUSSO,
Defendants-Appellants.

-------------------------------------X

TO THE UNITED STATES
COURT OF APPEALS
FOR THE SECOND CIRCUIT

Dist. Ct. 73 Cr. 164

Court of Appeals: T-7109

77-1175

INDEX TO RECORD ON APPEAL

1. Certified copy of docket entries (A-J)
1A. Judgment and commitment order of March 4, 1977 (Chiappe)
1B. Judgment and commitment order of March 4, 1977 (Russo)
2) Indictment 73 Cr. 164
3) Grand Jury minutes of 2/15/1973 filed 2/23/73
4) Warrant of arrest (Chiappe) 2/15/73 filed 3/8/73
5) Indictment 73 Cr. 239 filed 3/8/73
6) Minutes of 5/27/76 (Mishler, J.) filed 6/4/76
7) Notice of appearance (Chiappe) Gallina filed 6/4/76
8) Minutes of 6/4/76 (Mishler, J.) filed 6/17/76
9) Affidavit of Gallina 6/22/76 filed 6/22/76
10) Motion of Defendant (Chiappe) 6/24/76 filed 6/25/76
11) Letter of Gallina 6/1/76 filed 6/3/76
12) Letter of Gallina 6/7/76 filed 6/11/76
13) Letter of Judge Mishler 6/14/76
14) Letter of Warden Taylor 6/18/76
15) Letter of Judge Mishler 6/22/76

APR 4 1977

16) Letter of Warden Taylor 6/28/76

17) Minutes of 6/28/76 (Mishler, J.)

18) Minutes of 6/29/76 (Mishler, J.)

19) Order of Mishler, J. 6/29/76

20) Motion of Defendant (Chiappe) 10/5/76

21) Motion of Defendant (Chiappe) 10/5/76

22) Motion of Defendant (Chiappe) 10/5/76

23) Memo of law Defendant (Chiappe) 10/5/76

24) Order of Mishler, J. 10/13/76

25) Minutes of 11/20/76 (defendant's deposition)

26) Minutes of 11/22/76 (trial, Mishler, J.)

27) Minutes of 11/23/76 (" ")

28) Minutes of 11/24/76 (" ")

29) Minutes of 11/29/76 (" ")

30) Minutes of 11/30/76 (" ")

31) Minutes of 12/1/76 (" ")

32) Minutes of 12/2/76 (" ")

33) Minutes of 12/6/76 (" ")

34) Minutes of 12/7/76 (" ")

35) Minutes of 12/8/76 (" ")

36) Rulings on objections (Mishler, J.)

37) Photos of trial exhibits

38) Letter of Mishler, J. 12/9/76

39) Letter of Gallina 12/29/76

40) Motion of Defendant (Chiappe) 1/6/77

41) Motion of Defendant (Chiappe) 1/13/77

42) Memo of Defendant (Chiappe) 1/24/77
43) Order of Mishler, J. Re: medical records and photos 1/31/77
44) Minutes of 1/7/77 (hearing, Mishler, J.)
45) Minutes of 1/14/77 (" ")
46) Exhibit sheet (trial)
47) Exhibit sheet (hearing)
48) Court's exhibits (trial)
49) Order of Mishler, J. (Re: Toscanino hearing)
50) Defendant's motion for new trial - Chiappe
51) Defendant's supplementary motion for new trial - Chiappe
52) Government's affirmation in opposition.
53) Affidavit of AUSA PUCCIO (Chiappe extradition)
54) " " " " (" " Supplement)
55) Affidavit of Nicoli Re: extradition
56) Order sealing indictment 73 Cr. 164
57) Motion of defendant Russo - Rule 34 2/15/77
58) Memo of law - defendant Russo 2/15/77
59) Motion for new trial - defendant Russo 2/15/77
60) Affidavit of AUSA Puccio (Russo extradition)
61) " " " " - supplemental (Russo extradition)
62) Minutes of 7/6/76 (Platt, J.) (trial)
63) " " 7/7/76 (") "
64) " " 7/7/76 (") "
65) " " 7/8/76 (") "
66) " " 7/9/76 (") "
67) " " 7/12/76 (") "
68) " " 7/12/76, afternoon (Platt, J.) (trial)
69) Minutes of sentence dated 3/4/77 - Russo (Mishler, J.)

70) Notice of Appeal- Russo
71) Notice of Appeal- Chiappe
72) Clerk's Certificate

Respectfully submitted,

NANCY ROSNER, ESQ.
Attorney for Appellant Russo
401 Broadway
New York, N.Y. 10013
(212) 925-8844

JURIS G. CEDERBAUMS, ESQ.
Attorney for Appellant Chiappe
30 Broad Street
New York, N.Y. 10004
(212) 425-1060

Dated: New York, N.Y.
March 31, 1977

NOTICE OF ENTRY

Sir:-Please take notice that the within is a *(certified)* true copy of a

duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

NANCY ROSNER

Attorney for

Office and Post Office Address

401 Broadway
NEW YORK, N. Y. 10013

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

NANCY ROSNER

Attorney for

Office and Post Office Address

401 Broadway
NEW YORK, N. Y. 10013

To

Attorney(s) for

Index No. 73 Cr 164 Year 19

USA

-v-

Francois Chiappe
and
Miguel Russo

Index to Record
on Appeal

NANCY ROSNER

Attorney for

Office and Post Office Address, Telephone

401 Broadway
NEW YORK, N. Y. 10013
(212) 925-8844

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

D. C. Form No. 100
CRIMINAL DOCKET **73 CR 164**

MISH

~~WEINSTEIN J~~
MISHLER

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.: FRIED
vs.	for deft. CHIAPPE:
✓ FRANCOIS ROSSI, a/k/a "Marcello"	~~Joseph~~ Gino Gallina
PAUL PAGANACCI	30 Broad St., NYC.
✗ MIGUEL RUSSO \ ~~FRANCOIS CHIAPPE~~	425-1060
	RUSSO-Nancy Rosner 401 Broadway N.Y. 925-8844
ELIO PAOLO GIGANTE	
MARIANO WARDEN	For Defendant: ROSSI:
FELICE BONETTI	
CESAR MELCHIORE and	Albert Krieger 745-5100
JOHN DOE, a/k/a "Dino"	~~401 Broadway, N.Y.C.~~
	925-5937

Did import heroin into the U.S.

77-1125

ABSTRACT OF COSTS	AMOUNT	DATE	NAME		RECEIVED	DISBURSED
			CASH RECEIVED AND DISBURSED			
Fine, (Rossi)	20000 00	5-12-76	[illegible] Appeal	Rossi	5 –	
Clerk,		5-13-76	Pd Treas			5
Marshal,		3-9-77	Notice of Appeal	Chiappe	5 –	
Attorney,		3-10-77	Paid to Treas			5
Commissioner's Court,		3-9-77	Notice of appeal	Russo	5 –	
Witnesses,		3-10-77	Paid to Treas			5

DATE	PROCEEDINGS
2-15-73	Before WEINSTEIN J - Indictment filed and ordered sealed by the Court. Bench Warrants Ordered for all defts. ~~Bench War~~
-73	Bench Warrants Issued.
73	By MISHLER, CH J - Ordered that the above captioned indictment be opened by the Court for the limited purpose of reproducing as many copies of the indictment as are necessary for extradition proceedings concerning fugitives named as defts. therein and it is further Ordered that, after the above reproduction has been completed, the Indictment be resealed and not made public (except in connection with extradition proceedings)
73	Grand Jury Minutes of Feb. 15, 1973 filed.
3	Af[illegible] Two Affidavits filed.
	[illegible]

73CR 164 B

DATE	PROCEEDINGS
2-23-73	Bench Warrant retd and filed unexecuted (~~deft FRANCOIS ROSSI~~)
6-3-73	Four Affidavits, 2 Bench Warrants (unexecuted) placed in sealed vault.
-27-73	Three Affidavits filed. Placed in sealed vault.
0/75	Before MISHLER, CH.J.- Case called- Deft FRANCOIS ROSSI produced in Court on bench warrant-Interpreter present- Indictment ordered unsealed-Deft to retain counsel-Bail set at $5,000.000.00- court advised deft of his rights- Pleading ~~xxx~~ set for 7/18/75 at 11:00 A.M.
7-16-75	Notice of Appearance filed as to deft FRANCISCO ROSSI.
7-16-75	Letter filed received from Chambers re deft ROSSI(undated)
7-16-75	Before MISHLER, CH J - case called - deft ROSSI & counsel Albert Krieger present - deft arraigned and enters a plea of not guilty on all 4 indictments(73 CR-164; 73 CR-195;73 CR 239 and 72 CR-1162. Case set down for July 31, 1975 at 9:30 am to set a date for trial. 3 Affidavits marked Govts. Ex. 1, 2, & 3 for Identification in this case. Interpreter Albert Boyne present.
7-31-75	Before MISHLER, CH J - case called - deft ROSSI & counsel Albert J. Krieger present - Interpreter L.Clancy present - deft waived rights to a speedy trial - case set down for trial on Jan. 5, 1976.
8/4/75	Certificate of engagement filed
8-15-75	Before MISHLER, CH J - On motion of Asst. U.S. Atty. Puccio indictment ordered unsealed - further, any relating documents sealed and placed in court safe are to be unsealed and filed and placed in respective file. (see 72 CR-1162, 73 CR 239 and 73 CR 195)
822-75	Bench Warrant (ARCANO) Affidavit of MICHELE SIMONE NICOLI and Affidavit of VICTOR J. ROCCO filed.
9/2/75	Stenographers Transcript dated 7/16/75 filed
9-12-75	Notice of Motion filed & affidavit, for an order modifying bail and bail conditions presently existing etc.(deft FRANCOIS ROSSI, ret.9-19-75 at 9:30 am)
19/75	Before MISHLER,CH.J.- Case called- Motion withdrawn (Deft's F. ROSSI motion for an modifying the bail and bail conditions presently existing , etc.)
/3/75	Stenographers Transcript dated 10/10/75 filed
12/8/75	Petition for writ of prohibition, etc. filed
-5-76	Before MISHLER, CH J - case called - deft Rossi & counsel Albert Krieger present - Interpreter M.Mensa present. Interpreter L.Clancy present - trial ordered and begun - Jurors selected and sworn -Interpreter Maria Elana Cardenas present - Trial contd to Jan. 6, 1976 at 10:00 am.

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CRIMINAL DOCKET

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BEST COPY AVAILABLE

DATE	PROCEEDINGS
1-6-76	Before MISHLER, CH J - case called - deft Rossi & counsel Albert Krieger present - Interpreter Maria Cardenas present - trial resumed - Trial contd to Jan. 7, 1976.
1-7-76	Before MISHLER, CH J - case called - deft ROSSI & counsel present - Interpreter Maria Cardenas present - trial resumed - trial contd to Jan. 8, 1976.
1-8-76	Before MISHLER, CH J - case called - deft Rossi & atty present - Interpreter M.Cardenas & M.Mensa present - trial resumed - Trial contd to 1-12-76.
1-12-76	Before MISHLER, CH J - case called - deft Rossi & counsel present - trial resumed - Interpreter M.Cardenas present - Govt rests - motion by deft for Judgment of Acquittal is denied - deft rests - trial contd to Jan. 13, 1976.
1-13-76	Before MISHLER, CH J - case called - deft & counsel present - Interpreter M.Cardenas present - trial resumed - motion by deft for mistrial is denied - trial contd to Jan. 14, 1976
1-13-76	By MISHLER, CH J - Order of sustenance signed (Lunch)
1-14-76	6 stenographers transcripts filed (pgs 1 to 927)
1-14-76	Before MISHLER, CH J - case called - deft Rossi & counsel A.J.Kringer present - Interpreter M.Cardenas present - trial resumed - At 11:10 AM the jury retired for deliberations - Jury returns with a verdict of guilty at 4:10 PM - Jury polled and Jury discharged - all motions reserved until time of sentence-sentence adjd without date - trial concluded.
1-14-76	By Mishler, CH J - Two Orders of sustenance filed (lunch & coffee etc)
1-15-76	Stenographers transcript filed dated Jan. 14, 1976
[illegible]	[illegible] - case called - sentence adjd to 4-5-7[illegible] [illegible] am [illegible]
5-76	Before Mishler, CH J - case called - sentence adjd to 4-27-76 at 9:30 am (Rossi)
-27-76	Before MISHLER, CH J - case called - sentence as to deft ROSSI adjd to May 12, 1976 at 9:30 am.
12-76	Before MISHLER, CH J - case called - deft ROSSI & counsel Albert Krieger present - Interpreter L.Clancy present - deft sentenced to a term of imprisonment of 20 years and a fine of $20,000 - sentence to be computed from Feb. 9, 1973 Clerk to file Notice of Appeal.
-12-76	Judgment & Commitment filed - certified copies to Marshal ([illegible])

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D

DATE	PROCEEDINGS
5-12-76	Notice of appeal filed. (ROSSI)
5-12-76	Docket entries and duplicate of Notice of Appeal mailed to the Court of appeals
5-14-76	Judgment & commitment retd and filed - deft. del.to MCC, NY
5-[illegible]-76	[illegible] received from the Court of Appeals that the Index to [illegible] be [illegible] on or before June 14, 1976 ([illegible])
5/27/76	Before MISHLER,CH.J.- Case called- defts RUSSO and CHIAPPE present without counsel- interpreter present- court to appoint counsel bail set at $2500.00 as to each deft(surety Co. bond)- bail to cover this case adn 73CR239- arraignment set down for 6/4/76- trial set for 6/28/76
5/27/76	Financial affidavits filed(both defts)
6/1/76	Letters from Judge Mishler to deft Russo and Chiappe dated 5/28/76 filed
6-1-76	Notice of appearance filed (Francois Chiappe)
6-2-76	Stenographers transcript filed dated May 12, 1976
6/3/76	Letter from Gino Gallina dated 6/1/76 filed
6/4/76	Before MISHLER,CH.J- Case called- defts and counsel present- interpreter swron- defts arraigned and each enter plea of not guilty-trial set for 6/28/76(CHIAPPE and RUSSO)
6/4/76	Notices of appearances file(both defts)
6/7/76	Record on appeal certified and mailed to court of appeals(ROSSI)
6/10/76	Acknowledgment received from court of appeals for receipt of record
6/11/76	Letter from Gino Gallina dated 6/7/76 filed
6-14-76	Stenographers transcript filed dated May 27, 1976.
6-14-76	Before MISHLER, CH J - case called - defts Russo & Chiappe & counsel present - motion argued by the Govt to adjourn the trial date of June 28, 1976; motion denied as indicated on the record.
6-15-76	Judgment & commitment retd and filed -Deft ROSSI delivered to U.S.P. Marion, Ill.
6-17-76	Stenographers transcript dated June 4, 1976 filed (RUSSO & CHIAPPE)
6-22-76	Affidavits of GINO GALLINA and unsigned order filed received from Chambers and placed in this file.
6-23-76	Before MISHLER, CH J - case called - motion for discovery argued - Govt consented to turn over discovery as indicated on the record (Russo)
6-24-76	Copy of letter from Judge Mishler dtd 6-23-76 with annexed letter from Albert Krieger dtd 6-23-76 filed.
6-24-76	Copy ofletter from Judge Mishler to Warden Taylor dtd 6-22-76 filed.

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CRIMINAL DOCKET

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DATE	PROCEEDINGS
6-25-76	Notice of motion filed, ret. June 28, 1976, for for adjournment of trial etc. (this motion adjd to Oct. 4, 1976)
6-28-76	Before MISHLER, CH J - case called - adjd without date for trial - deft Chiappe ill - possible severance from trial.
6-29-76	stenographers transcript filed dated June 28, 1976
6-30-76	Stenographers transcript filed dated June 29, 1976
7-6-76	Letter from Larry F Taylor dtd 6-28-76 filed.
7/7/76	Before PLATT, J.- Case called- deft and counsel present- interpreter sworn- deft's motion/to suppress- decision reserved- jurors selected and sworn-deft's motion for an order supplying daily transcript granted trial contd to 7/8/76 (RUSSO)
7-8876	Order appointing counsel filed.
7-8-76	Before MISHLER, CH. J. - Case called. All defts & counsel present. Trial resumed. Immunity order signed by the Court. The witness Richard Bacetta refused to answer any questions put before him and the Court held him in contempt of court~~Witnexx~~. Witness Richard Bacetta sentenced to imprisonment for a period of 6 months or until verdict of the case on trial, whichever comes first. Execution of sentence is stayed until 7-9-76 by 2 P.M. Trial continued to 7-9-76 at 10 A.M.
7-9-76	Before PLATT, J. - Case called. deft & counsel preset. Jury retires for deliberations at 10:40 a.m. Jury is excused by the Court at 5:50 p.m. to continue deliberations on 7.12/76 at 10:00 a.m.(RUSSO)
7-12-76	Before MISHLER, CH J - case called - deft & counsel present 0 (Miguel Russo) trial contd - jury resumes deliberations - court declares a miatrial - The Jury is excused with the thanks of the court.
-7	By Platt, J - 2 orders of sustenance fild (July 9 and July 12 Lunch)
76	Before MISHLER, CH J - case called motion by deft RUSSO for a speedy trial and for reduction of bail adjd to July 6, 1976.
-7	Before MISHLER, CH J - case called- 8-5-76 for trial(RUSSO)
6	Voucher for compensation for expert services filed (RUSSO)
0/76	Voucher for compensation for expert services filed. (RUSSO)
6	Stenographers transcript dtd 7/9/76 filed.(RUSSO)
6	Before MISHLER, CH J - case called - deft Russo & counsel present- Interpreter L. Clancy present - deft Chiappe not present with counsel - Nov. 15, 1976 for trial. RUSSO & CHIAPPE code I start 8-16-76 limited to 11-15-76

C

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F

DATE	PROCEEDINGS
8-9-76	Certificate of engagement filed setting case for trial Nov. 15, 1976.
9/3/76	Stenographers transcript dated 7/6/76 at 10:00 a.m. (MIGUEL RUSSO).
9-15-76	copy of letter filed received from Chambers to counsel Nancy Ros[illegible], Esq. re deft Miguel Russo etc.
[illegible]-20-76	Copy of letter from chambers dtd [illegible]-17-76 setting trial for 11-8-7[illegible] filed. [illegible]
	[illegible] dismiss [illegible], [illegible] in connection with the [illegible] motion, and order for foreign deposition [illegible] pending trial all returnable 10/6/76 filed and forwarded to chambers (FRANCOIS CHIAPPE).
10/6/76	Defts memorandum of law in support of motions to dismiss indictment and for foreign depositions filed and forwarded to chambers. (FRANCOIS CHIAPPE).
10-8-76	Before MISHLER, CH. J. - Case called. All defts motions and all Govt's answering affidavits to be submitted by 10-13-76.
10-13-76	By MISHLER, CH J - Order filed granting leave to take foreign depositions and for issuance of commissions
10-14-76	Letter filed dated Oct. 7 and reply to counsel Nancy Rosner, Esq. counsel for deft RUSSO that trial date is adjd to Nov. 22, 1976, etc.
10-14-76	Letter filed received from Chambers dated June 17, 1976 re deft CHIAPPE from Joel Brenner, Esq.
10-22-76	Order filed received from the Court of appeals that the matter be remanded to Ch.Judge Mishler for the purpose of having the original or copies of documents transmitted between the U.S. and Spain relating to the arrest and extradition of appellant Francois Rossi identified and returned to this Court for consideration and appeal.
0-22-76	Before DOOLING J - case called -pursuant to Order of U.S.Court of Appeals for the Second Circuit, dated Oct. 20, 1976, the following were received as court exhibits to be transmitted to the court of appeals Court Ex. No. 1--Note 2 Verbale(Spanish) dated July 14, 1973; Court Ex. No. 1A-English translation of Court Ex. No 1; Court Ex. 2-affidavit of Murray Stein, Esq. dated Oct. 7, 1976.
10-26-76	Supplemental Record on appeal certified and d[illegible] to the Court of Appeals by Bernard J.Fried (Rossi)
0-28-76	Acknowledgment filed received from the court of appeals for receipt of record as above.

continued........

CRIMINAL DOCKET 75 CR 164 G

DATE	PROCEEDINGS
11-22-76	Before Mishler, J.- Case Called. Defts & Counsel present. Interpreter present. Trial ordered and begun. Jurors were selected and sworn. Trial continued to 11-23-76 at 9:45 A.M. (RUSSO & CHIAPPE)
11-23-76	Before Mishler, J.- Case Called. Defts. & Counsel present. Trial resumed. Interpreter L. Clancy & A Boyne present. Trial continued to 11-24-76 at 10:00 A.M. (FRANCOIS CHIAPPE & MIGUEL RUSSO)
11/24/76	Before MISHER, CH. J. -Case called. Defts& Counsel present. Trial resumed. Trial continued to 11/29/76 at 10:00 a.m. (CHIAPPE, RUSSO).
11/29/76	By MISHLER, CH. J.- Order filed on rulings on objections - the 1st two objections are sustained, the remaining objections are under consideration, etc. Objection to evidence concerning the witnessess' reluctance to travel to the U.S. at U.S. Governemtn cost and expense is overruled. (see order). FRANCOISE CHIAPPE)
11-29-76	Before Mishler, J.- Case Called. Defts Chiappe and Russo present. Cpunsels and interpreter Barron Boyne present. Trial resumed. Motion by deft. Chiappe for a mistrial is denied. Hearing held on a motion to suppress. Hearing and trial continued to 11-30-76 at 10:00 A.M.
11/30/76	Voucher for compensation for expert services filed. (RUSSO).
11-30-76	Before Mishler, J.- Case Called. Defts Chiappe & Russo present. Counsels present. Interpreter Boyne present. Trial resumed. Hearing continued on motion to suppress. Govt. rests in the hearing. Defts rest in the hearing, Hearing concluded. Motion to suppress is denied as it applies to deft. Chiappe. Motion to suppress is granted and denied in part as it applies to the deft. Russo. Trial continued to 12-1-76 at 9:15 A.M. (CHIAPPE & RUSSO)
1[illegible]76	Before Mishler, J.- Case Called. Defts. Chiappe & Russo and [illegible] present. Interpreter Boyne present. Trial resumed. Motion by [illegible] Chiappe for a mistrial is denied. Govt. rests. Motion by [illegible] for a judgment of acquittal is denied. Trial continued to [illegible] at 10:[illegible] A.M. (Chiappe & Russo)
[illegible]76	2 transcripts filed (one dated July 12, 1976 and one dated July 12, 1976 (afternoon session)
[illegible]76	Before Mishler, J.- Case Called. Deft. Chiappe & Russo present with Counsel and Interpreter Boyne. Trial resumed. Motion by defts for a mistrial is denied. Motion by Mr. Callina to withdraw as counsel for the deft Chiappe denied. Trial continued to 12-6-76 at 10:00 A.M.

9

C. 1[illegible]

73 CR 164 H

DATE	PROCEEDINGS
12-6-76	Before Mishler, J.- Case Called. Deft Chiappe & Russo present. Counsel and Interpreter Boyne present. Trial resumed. Defts rest. Defts. renew their motion for a judgment of acquittal. Motion denied. Trial continued to 12-7-76 at 10:00 A.M. (CHIAPPE & RUSSO)
	Before Mishler, J.- Case Called. Deft. Chiappe & Russo present. Counsel and Interpreter Boyne present. Trial resumed. Motion by Deft. Chiappe for a mistrial is denied. Court charges jury. At 11:50 A.M. the jury retired for deliberation. At 6:10 P.M. the jury returned and asked to suspend for the day and return tomorrow 12-8-76 for further deliberation. Trial continued to 12-8-76 at 9:30 A.M. (CHIAPPE & RUSSO)
12-8-76	By Mishler, J.- Order of Sustenance filed.
12-8-76	By Mishler, J.- Order of Sustenance filed.
12-8-76	By Mishler, Ch J - 3 orders of sustenance filed
12-8-76	Before Mishler, Ch J - case called - defts Chiappe & Russo present with attys - Interpreter Barron Boyne present - trial resumed - at 9:30 am Jury resumed deliberations - at 6:50 PM the jury retd and rendered a verdict of guilty as to deft russo. At ~~x~~ 8:55 PM the jury returned and rendered a verdict of guilty as to deft Chappe - Jury polled and jury discharged - trial concluded - all motions reserved to time of sentence.
12-9-76	Voycher for compensation for expert services filed (Albert Barrone-Boyne)
12-17-76	By MISHLER, CH. J. - Order dtd 12-16-76 re photographs used as exhibits received in evidence filed.
12/20/76	Voucher for compensation for expert services filed.
12/22/76	Stengraphers transcript dated 11/22/76, 11/23/76, 11/24/76, 11/29/76, 11/30/76, 12/1/76, 12/2/76, 12/6/76, 12/7/76, 12/8/76, 12/20/76 filed.
1-7-77	Before MISHLER, CH. J. - Case called. Deft Chiappe & counsel present. Interpreter present. Hearing ordered & begun on the jurisdictional claim. Adj'd to 1-14-77 at 10 A.M.
1-14-77	Mandate and Opinion filed received from the Court of Appeals affirming the judgment in accordance with the opinion of this Court. (FRANCOIS ROSSI)
-14-77	Voucher for Compensation for Expert Services filed and forwarded to Washington for payment. (FRACOIS CHIAPPE)
1-14-77	Notice of motion filed (recvd from Chambers for permitting deft Chiappe to call or depose [illegible] witnesses, etc.
1-14-77	Before Mishler, Ch J - case called -, deft Chiappe & counsel Juris Cederbaum present - Interpreter Albert Barron-Boyne present - hearing continued - motion for continuance of hearing is denied - hearing conclud Decision reserved.

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CRIMINAL DOCKET

I

DATE	PROCEEDINGS
1-25-77	Supplemental record on appeal received from the court of appeals - acknowledgment mailed to court of appeals (ROSSI)
1-25-77	Voucher for compensation for expert services filed and forwarded to Admin. Office for payment (Miguel Russo)
2.1.77	By Mishler, J.- Memorandum of Decision and Order filed denying the deft's. motion to set aside the jury verdict of guilty etc. (FRANCOIS CHIAPPE)
~~2-7-77~~	~~Notice of appeal filed (Chiappe) from order denying motion~~ of 2-1-77 of Ch.Judge Mishler
2/15/77	Notice of motion filed returnable 2/18/77 at 10:00 a.m. for an order arresting judgment and dismissing the indictment.(MIGUEL RUSSO)
2/15/77	Notice of motion filed returnable 2/18/77 at 10:00 a.m. to set aside the verdict of [illegible] jury and grant him a new trial, (MEGUEL RUSSO)
2/16/77	Letter filed to Judge Mishler from Juris G. Cederbaums, Esq. counsel for deft - Francois Chiappe, dtd 2/16/76, re: claims of errors or exeeptions to the probation report submitted by Mr. Allen. (FRANCOIS CHIAPPE)
2/16/77	Notice of motion to adjourn sentence and hearing for new trial filed returnable 2/18/77. (FRANCOIS CHIAPPE).
2.18.77	Before Mishler, J.- Case Called. Sentence adjd. to 3.4.77 on consent. (FRANCOIS CHIAPPE)
2.18.77	Before Mishler, J.- Case Called. Motion for adjournment of the sentence and hearing for New Trial granted until 3.4.77. (FRANCOIS CHIAP
2.18.77	Before Mishler, J.- Case Called. Motion to set aside the verdict and grant the deft. a new trial etc. argued and denied. (MIGUEL RUSSO)
2.18.77	Before Mishler, J.- Case Called. Motion for an order arresting Judgment and dismissing the indictment argued and denied. (RUSSO)
2.[illegible]7	Before Mishler, J.- Case Called. Sentence adjd to 3.4.77 on consent (MIGUEL RUSSO)
	Supplemental motion for new trial pursuant to rule 33 filed and forwarded to chambers.(FRANCOIS CHIAPPE).
	Before MISHLER, CH. J.- Case called. Deft & Counsel present. Deft sentenced to a term of imprisonment for a period of 20 years and a fine of $20,000.00. Court advised deft of his right to appeal. Clerk to file notice of appeal without fee. (MIGUEL RUSSO)
	Judgment & Commitment filed. Certified copis to Marshals.
	Notice of appeal filed. (MIGUEL RUSSO).
	Docket entries and duplicate of Notice of Appeal mailed to the C of A.

PROCEEDINGS

J

4/77 Before MISHLER , CH.J.- Case called. Deft &Counsel presnnt. Deft sentenced to a term of imprisonment for a period of 20 years and a fine of $20,000.00. court advised deft of his right to appeal. Bail conditions continued. (FRANCOIS CHIAPPE)

/77 Judgment & Commitment filed. Certified copies to Marshals. (FRANCOIS CHIAPP

/77 Before MISHLER, CH.J - Case called. Motion for new trial argued. Motion denied as indicated on the record. (CHIAPPE).

4/77 Notice of appearance filed (CHIAPPE) - Juris Cederbaums, 30 Broad Street Street. New Yokk NY 10004 212 425 1060

/77 Affidavit of PEter R. Schlam in eedponse to Francois Chiappes motion for a new trial filed.

/25/77 Notice ofmotion for new trial pursuant to Rube 33 filed and forwarded to chambers.(FRNCOIS CHIAPPE)L

9-77 Notice of appeal filed (CHIAPPE) Docket entries and duplicate of notice mailed to the court of appeals

/9/77 Certified/ Judgment & Commitment returned and filed. Deft delivered to MCC, NY.(RUSSO)

3/9/77 CERTified copy of Judgment & Commitment returned and filed. Deft delivered to MCC, NY (CHIAPPE).

/9/77 ~~Application filed denying the defts request to remain at MCC until 3/24/77.~~ Warden Taylor advises that deft will be held at MCC at least until 3/14/77.(C

.11.77 Stenographer's Transcript dated March 4th, 1977 filed. (RUSSO)

.14.77 Order filed received from the Supreme Court of the United States that the petition for Writ of Certioraria is denied. (ROSSI)

-28-77 Scheduling order filed received from the c of a that the record on appeal be docketed on or before 4-7-77 (Chiappe & Russo)

/25/77 Notice of motion and memorandum filed for an order dismissing the indictment and for other relief as the court deems just and propr. (CHIAPPE)

A TRUE COPY
ATTEST
DATE 3/3/77
BY
DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U. S. A

-vs-

Francois Chiapp + Miguel Russo

Docket No. 73CR164

I, LEWIS ORGEL, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing copy of the Docket Entries from A to J and the original papers numbered from page 1 to 72 and exhibits numbered ________ constitute the Record on Appeal.

I further testify that the last day to file said record is 4/7/74

IN TESTIMONY WHEREOF, I have caused the seal of said Court to be hereunto affixed, at the Borough of Brooklyn in the Eastern District of New York, this 31st day of March in the year of our Lord, One Thousand Nine Hundred and Seventy-four and the Independence of the United States Two Hundred and ________.

5

LEWIS ORGEL
Clerk

By [illegible]
Deputy Clerk

APR 4 1974

( )

United States of America vs.

United States District Court for

Eastern Dist. of NY

DEFENDANT

FRANCOIS CHIAPPE

DOCKET NO. 73 CR 164M'FILMED

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
3	4	1977

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Juris Cederbaums, Esq.
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ MAR 4 1977 ★
TIME A.M. ....
P.M. ....

FINDING & JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of violating T-21, U.S. Code, Secs. 173, 174, 846 and 963, in that from on or about Jan. 1, 1965 up to and including the date of this indictment, the defendant, with others, did combine, conspire and agree together to import and bring into the U.S. large amounts of heroin, contrary to law and to conceal, buy, sell and facilitate the transportation after the drug had been imported and brought into the U.S.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

20 years and a fine of $20,000.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

ct Judge

trate

Jacob Mishler

Date 3/4/77

1A

EJB:TPP:lag
F.#

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA

- against -

FRANCOIS ROSSI, a/k/a "Marcello"
PAUL PAGANACCI
FRANCOIS CHIAPPE
MIGUEL RUSSO
ELIO PAOLO GIGANTE
MARIANO WARDEN
FELICE BONETTI
CESAR MELCHIORE and
JOHN DOE, a/k/a "Dino",

Defendants.

- X

Cr. No. ____________
(21 U. S. C., §173
21 U. S. C., §174
21 U. S. C., §846
21 U. S. C., §963)

73 CR 164

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ FEB 15 1973 ★
TIME A.M. ....
P.M. ....

THE GRAND JURY CHARGES:

From on or about the 1st day of January 1965, and continuously thereafter up to and including the date of the filing of this indictment, within the Eastern District of New York, and elsewhere, FRANCOIS ROSSI, a/k/a "Marcello", PAUL PAGANACCI, FRANCOIS CHIAPPE, MIGUEL RUSSO, ELIO PAOLO GIGANTE, MARIANO WARDEN, FELICE BONETTI, CESAR MELCHIORE, and JOHN DOE, a/k/a "Dino, the defendants, together with Michel Simon Nicoli, named herein as a co-conspirator but not as a defendant, and others known and unknown to the Grand Jury, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate prior to May 1, 1971 Sections 173 and 174 of Title 21, United States Code, and on and after May 1, 1971 to violate Sections 812, 841(a)(1), 841(b)(1)(A), 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

1. It was part of said conspiracy that prior to May 1, 1971 the defendants fraudulently and knowingly would import and bring into the United States large amounts of heroin, a narcotic drug, contrary to law.

2. It was further a part of said conspiracy that prior to May 1, 1971 the defendants unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of large amounts of heroin, a narcotic drug, after the narcotic drug had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

3. It was further a part of said conspiracy that on and after May 1, 1971 the defendants knowingly and intentionally would import large amounts of heroin, a Schedule I narcotic drug controlled substance, into the United States from places outside thereof.

4. It was further a part of said conspiracy that on and after May 1, 1971 the defendants knowingly and intentionally would distribute and possess with intent to distribute large amounts of heroin, a Schedule I narcotic drug controlled substance.

5. It was further a part of said conspiracy that the defendants would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed within the Eastern District of New York and elsewhere:

OVERT ACTS

1. In or about June 1971, co-conspirator Michel Simon Nicoli met with the defendant ELIO PAOLO GIGANTE in Bogota, Colombia.

2. In or about July 1967, co-conspirator Michel Simon Nicoli met with the defendants FRANCOIS CHIAPPE and FRANCOIS ROSSI, a/k/a "Marcello" in Buenos Aires, Argentina.

3. In or about October 1967, co-conspirator Michel Simon Nicoli received nine (9) kilograms of heroin from the defendant MIGUEL RUSSO in New York, New York.

4. In or about March 1968, co-conspirator Michel Simon Nicoli travelled from Montevideo, Uruguay to John F. Kennedy Airport in Queens, New York.

5. In or about April 1968, co-conspirator Michel Simon Nicoli met with the defendant JOHN DOE, a/k/a "Dino" in Queens, New York.

6. In or about December 1968, co-conspirator Michel Simon Nicoli met with the defendants PAUL PAGANACCI and FRANCOIS ROSSI, a/k/a "Marcello" in Rome, Italy.

7. In or about June 1969, the defendant MARIANO WARDEN travelled from Buenos Aires, Argentina to the United States.

8. In or about April 1970, co-conspirator Michel Simon Nicoli met with the defendants FELICE BONETTI and CESAR MELCHIORE in Buenos Aires, Argentina.

(Title 21, United States Code, Sections 173, 174, 846 and 963.)

A TRUE BILL.

Robert N Wright
FOREMAN

Robert A. Morse by TPP
ROBERT A. MORSE
United States Attorney
Eastern District of New York

Form DJ-195
(Ed. 2-7-66)

No. __________

UNITED STATES DISTRICT **COURT**

Eastern *District of* New York

__________ *Division*

THE UNITED STATES OF AMERICA

vs.

FRANCOIS ROSSI, a/k/a
"Marcello" ET AL.,
Defendants.

INDICTMENT

21 U. S. C., §§173, 174,
846 and 963

A true bill,

____
Foreman.

Filed in open court this __________ *day*
of __________, *A. D. 19*____

____
Clerk.

*Bail, $*__________

THOMAS P. PUCCIO
Assistant U. S. Attorney
(212) 596-3531

GPO 902-482

EJB:TPP:lag
F.#

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

73 CR 239

UNITED STATES OF AMERICA

- against -

Cr. No. ________________
(21 U. S. C., §173
21 U. S. C., §174
21 U. S. C., §846
21 U. S. C., §963)

FRANCOIS ROSSI, a/k/a "Marcello"
PAUL PAGANACCI
FRANCOIS CHIAPPE
MIGUEL RUSSO
ELIO PAOLO GIGANTE
MARIANO WARDEN
FELICE BONETTI
CESAR MELCHIORE and
JOHN DOE, a/k/a "Dino",

Defendants.

- X

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ MAR 8 1973 ★
TIME A.M. ....
P.M. ....

THE GRAND JURY CHARGES:

From on or about the 1st day of January 1965, and continuously thereafter up to and including the date of the filing of this indictment, within the Eastern District of New York, and elsewhere, FRANCOIS ROSSI, a/k/a "Marcello", PAUL PAGANACCI, FRANCOIS CHIAPPE, MIGUEL RUSSO, ELIO PAOLO GIGANTE, MARIANO WARDEN, FELICE BONETTI, CESAR MELCHIORE, and JOHN DOE, a/k/a "Dino", the defendants, together with Michel Simon Nicoli and Florencio Gonzalez, named herein as co-conspirators but not as defendants, and others known and unknown to the Grand Jury, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate prior to May 1, 1971 Sections 173 and 174 of Title 21, United States Code, and on and after May 1, 1971 to violate Sections 812, 841(a)(1), 841(b)(1)(A), 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

1. It was part of said conspiracy that prior to May 1, 1971 the defendants and co-conspirators fraudulently and knowingly

would import and bring into the United States large amounts of heroin, a narcotic drug, contrary to law.

2. It was further a part of said conspiracy that prior to May 1, 1971 the defendants and co-conspirators unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of large amounts of heroin, a narcotic drug, after the narcotic drug had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

3. It was further a part of said conspiracy that on and after May 1, 1971 the defendants and co-conspirators knowingly and intentionally would import large amounts of heroin, a Schedule I narcotic drug controlled substance, into the United States from places outside thereof.

4. It was further a part of said conspiracy that on and after May 1, 1971 the defendants and co-conspirators knowingly and intentionally would distribute and possess with intent to distribute large amounts of heroin, a Schedule I narcotic drug controlled substance.

5. It was further a part of said conspiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed within the Eastern District of New York and elsewhere:

OVERT ACTS

1. In or about June 1971, co-conspirator Nicoli met with defendant GIGANTE in Bogota, Colombia.

2. In or about July 1967, co-conspirator Nicoli met with defendants CHIAPPE and ROSSI in Buenos Aires, Argentina.

3. In or about August 1967, co-conspirator Nicoli received approximately twelve and one half (12 1/2) kilograms of heroin from defendant RUSSO in New York, New York.

4. In or about October 1967, co-conspirator Nicoli received approximately nine (9) kilograms of heroin from defendant RUSSO in New York, New York.

5. In or about March 1968, co-conspirator Nicoli travelled from Montevideo, Uruguay to John F. Kennedy Airport in Queens, New York.

6. In or about Aprfl 1968, co-conspirator Nicoli met with defendant JOHN DOE, a/k/a "Dino" in Queens, New York.

7. In or about May 1968, defendant JOHN DOE, a/k/a "Dino" transported approximately forty (40) kilograms of heroin from San Antonio, Texas to New York, New York.

8. In or about November 1968, co-conspirator Nicoli and defendant ROSSI arranged to transport approximately eighty (80) kilograms of heroin to the United States.

9. In or about December 1968, co-conspirator Nicoli met with defendants PAGANACCI and ROSSI in Rome, Italy.

10. In or about April 1969, co-conspirator Nicoli and defendant ROSSI arranged to transport approximately thirty (30) kilograms of heroin to the United States.

11. In or about June 1969, defendant ROSSI arranged to transport approximately one hundred (100) kilograms of heroin to the United States.

12. In or about June 1969, defendant WARDEN travelled from Buenos Aires, Argentina to the United States.

13. In or about January 1970, defendant ROSSI made a telephone call to co-conspirator Nicoli concerning a sixty (60)

kilogram shipment of heroin.

14. In or about April 1970, defendant ROSSI made a telephone call to co-conspirator Nicoli concerning a sixty (60) kilogram shipment of heroin.

15. In or about April 1970, co-conspirator Nicoli met with defendants BONETTI and MELCHIORE in Buenos Aires, Argentina.

16. In or about December 1970, defendant ROSSI made a telephone call to co-conspirator Nicoli concerning a sixty (60) kilogram shipment of heroin.

(Title 21, United States Code, Sections 173, 174, 846 and 963.)

A TRUE BILL.

Thomas Q Inley
FOREMAN

Robert A. Morse by TPP
ROBERT A. MORSE
United States Attorney
Eastern District of New York

Form D[illegible]95
(Ed. 2-7-66)

No. ______________

UNITED STATES DISTRICT **COURT**

Eastern ***District of*** New York

______________ ***Division***

THE UNITED STATES OF AMERICA

vs.

FRANCOIS ROSSI, aka "Marcello,
ET AL.,
Defendants

INDICTMENT

21 U. S. C., Sections
173, 174, 846 and 963

A true bill,

Thomas O [illegible]
Foreman.

Filed in open court this ______________ ***day***

of ______________, ***A. D. 19***____

____
Clerk.

Bail, $______________

____

THOMAS P. PUCCIO, AUSA
Chief, Narcotics Section
(212) 596-3531/3532

GPO 902-482

Before Judge: MILLER CJ

Date:

File Number: 73 CR 164

USA
Plaintiff

V/S

RUSSO + CHIAPPE
Defendant

V/S

3 rd. ~~Party Deft.~~

Attorney
PETER SCHLAM, AUSA
NANCY ROSNER, ESQ
GINO E. GALLINA, ESQ
Attorney

~~Attorney~~

GOVERNMENT
EXHIBIT
PAGE I

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
NOV 22 1976	NOV 22 1976		
MICHEL NICOLI	5 Page Document	1	
Ct Reporter M. Ciccozzi	Registration form + bill	2	
Interpreter Silvia Clemency	Photostat - Document (front)	1-C	
Ct Reporter H Shapiro	" " (back)	1-D	
	Registration / City Squire	3	
	3-Page Document	4	

Photostat - Immigration form 8/10/67	4-A	
Registration - Bill / Americana	5	
3 page document	6	
Photostat - Immigration 10/21/67	6-A	
Photostat	6-B	
"	6-C	
"	6-D	
Reg. / Hotel Di Lido 10/24/67	7	
Reg. bill Hotel Hilton 10/27/67	8	
Di Lido Reg. 10/27/67	9	
Photostat - 3 pages	10	
Immigration form	10-A	
" "	10-B	
Reg. - Bill / Di Lido 2/14/68	11	
Photostat / I-94 form	~~13~~	13 11/23/76
" " "	14	
Photostatte / I-94 form	~~15~~	15 11/23/76
" " (redacted)	16	46 FC

Before Judge: MILLER CHJ

Date:

File Number: 73 CR 164

USA Plaintiff

Attorney

V/S

RUSSO & CHIAPPE

Defendant

Attorney

V/S

3 rd. Party Deft

Attorney

GOVERNMENT EXHIBIT
PAGE II

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
	NOV 22 1976		
	Photostat / I94 form (redacted)	17	
	Registration bill American 8/10 8/11 '67	18	18 11/23/76
	Photostat I-94 form	19	
	2 pg Hotel Hilton record	20	20
	" " "	21	21
	Photograph (André Condemine)	22	[illegible]

	" (Etienne Cassara)	23	23
	" (Pierre Massot)	24	24
	Photograph (Rossi Chiappe)	25	
	Immigration form I-94		
NOV 23 1976	NOV 23 1976		
MICHEL NICOLI	Photograph (Louis Bonsignour)	27	27
Cl Reporter H Algeria	Immigration form I-94	28	28
Interpreter L. Clancy	Photograph (Joseph Alfonsi)	29	29
Cl Reptr J Babilla	Immigration form I-94	30	30
Cl Reptr M Rinozzi	Photograph (Giovanni Bossio)	31	31
	Registration Hotel Hilton 1 pg	32	
	" " " 1 pg.	32A	32-A
	Immigration form I-94	33	33
	Photograph (Paolo Gigante)	34	34
	" (Jose Minnero)	35	35
	" (Claude Castau)	36	36
	" (Alberto Lanvain)	37	37
	Immigration form I-94	38	38

Before Judge: ----------

Date: ____________

File Number: 73 CR 164

USA Plaintiff

Attorney

---------- V/S ----------

CHIAPPE & RUSSO Defendant

Attorney

---------- V/S ----------

3 rd. Party Deft.

Attorney

GOVERNMENT EXHIBIT
PAGE III

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
	NOV [illegible]		
	Hotel records (City Squire)	39	39
	Photograph (Florencio Gonzalez)	40	40
	" (Ramon Del Bono)	41	41
	Immigration Form / Phostat of Declaration Form	~~42~~	
	Hotel record (City Squire)	43	43
	Immigration form I-94	44	44

	Hotel records (Americana)	~~45~~	45
	Immigration form I-94	46	
	" " "	~~47~~	47
	Registration (Di Lido Hotel)	~~48~~	48
	Hotel record (Hotel Hilton)	~~49~~	49
	Photograph (Carmine Russo)	~~50~~	50
	" (Andrea Settembre)	~~51~~	51
	Registration (Di Lido Hotel)	~~52~~	52
	Immigration form I-94	~~53~~	5
Nov. 24, 1976	Nov. 24, 1976		
l Nicoli	Ipg doc. - Immi. doc. entry U.S.	54	54
Shapiro	photo - Martinez	55	55
Bloom Simon	photo -	56	~~[illegible]~~
Cain	photo -	~~57~~	57
IOV 29 1976	NOV 29 1976		
HEL NICOLI	Immigration form I-94 PAA Fl. 203	58	
ntr E. Kear	Passport	~~59~~	~~[illegible]~~
ector J. Rubella	I.D. Card	60	~~[illegible]~~

Before Judge: ---------

Date: ________

File Number: 73 CR 164

Plaintiff
U.S.A.

Attorney

V/S

CHIAPPE & RUSSO Defendant

Attorney

V/S

3 rd. Party Deft

Attorney

GOVERNMENT EXHIBIT
PAGE IV
PENGAD-Bayonne, N.J.

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
NOV 29 1976	NOV 29 1976		
HEARING PHILIP DOUKAS	Photograph	~~61~~	[illegible]
HEARING ALBERTO JESUS BORSALINO			
Interpreter L. Clancy			
NOV 30 1976	NOV 30 1976		
MICHEL NICOLI	Photograph	62	
Interpreter L. Clancy	"	63	

Ct Reporter E. Kaar	″	64	
Ct Reporter J Barbella			
HEARING ALBERTO JESUS BORSALINO			
Ct Reporter J. Ginsberg			
HEARING RENE EDUARDO DAFFIS NIKLISON			
HEARING PHILIP DOUKAS			
JOSEPH M. SENA			
LEO DAIGLE			
DEC 1 - 1976	DEC 1 - 1976		
PHILIP DOUKAS	Customs report 5/10/68	65	
ter E. Kaar			
RAVANELLO			
T SEELEY			
ter G Rudolph			
TO JESUS BORSALINO			
rter M Briggs			
ter J. Ginsberg			

BEFORE MISHLER, CH.J.

Before Judge:

Date:

File Number: 73 CR 164

USA Plaintiff

V/S

FRANCOIS CHIAPPE
MIGUEL RUSSO
Defendant

Attorney
PETER SCHLAM, AUSA

GINO E. GALLINA, ESQ
NANCY ROSNER, ESQ
Attorney

V/S

3 ~~rd. Party Plf~~

~~Attorney~~

GOVERNMENT EXHIBIT
PAGE I
3500

PENGAD-Bayonne, N.J.

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
	NOV 22 1976		
	29 Pages of reports	3500-1	
	2 page letter 7/18/74	3500-2	
	G.J.M. of Nicoli 2/15/73	3500-3	
	96 page report 1/20/73	3500-4	
	23 page statement	3500-5	
	2 " " 4/2/73	3500-6	

4 Page report	4/2/73	3500-7
2 " "	4/18/73	3500-8
2 " "	4/24/73	3500-9
1 " "	5/3/73	3500-10
3 " "	6/22/73	3500-11
Transcript of tel conversation	7/17/73	3500-12
1 page report	7/17/73	3500-13
1 " "	7/23/73	3500-14
3 " "	7/25/73	3500-15
4 " "	8/6/73	3500-16
1 " "	8/6/73	3500-17
1 " "	8/15/73	3500-18
1 " "	8/15/73	3500-19
3 " "	8/21/73	3500-20
4 page statement	8/16/73	3500-21
1 " report	11/14/73	3500-22
1 " "	11/14/73	3500-23
2 " "	1/14/73	3500-24

[illegible]

Before Judge: ----------

Date: ____________

File Number: 73 CR 164

USA Plaintiff

Attorney

V/S

CHIAPPE + RUSSO Defendant

Attorney

V/S

3 rd. Party Def.

Attorney

GOVERNMENT EXHIBIT
~~PAGE II~~
3500

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
	NOV 22 1976		
	1 Page report 1/30/75	3500-25	
	1 " " 5/29/73	3500-26	
	49 " " 5/14/74	3500-27	
	2 Page memo 4/18/68	3500-28	
	1 Page report 3/21/68	3500-29	
	12 Page statement 1/5/77	3500-30	

G J Mr. Nicoli 8/9/73	3500-31
4 page summary	3500-32
5 page report	3500-33
3 " " 11/24/73	3500-34
G J Mr. Nicoli 9/12/74	3500-35
Numerous notes by Mr. Schlam	3500-36
5 page document	3500-37
7 pages of notes (Schlam)	3500-38
3 page report 2/15/73	3500-39
NOV 29 1976	
Report 11/27/72	3500-40
2 page document	3500-41
1 page document	3500-42
8 page "	3500-42-A

BEFORE MISH'ER, CH.J.

Date: ______________

File Number: 73 CR 164

Plaintiff	Attorney
USA	PETER SCHLAM AUSA
V/S	
FRANCOIS CHIAPPE MIGUEL RUSSO Defendant	GINO E. GALLINA, ESQ. NANCY ROSNER, ESQ. Attorney
V/S	
~~3 rd. Party Deft~~	~~Attorney~~

DEFENDANT'S EXHIBIT

PENGAD - Bayonne

WITNESS	DESCRIPTION OF EXHIBITS NOV 24	IDENT.	EVIDENCE
	2pg news article	A	
	7pg doc. translation of A.	B	
NOV 30 1976	NOV 30 1976		
HEARING DEFT FRANCOIS CHIAPPE	Photo – (Deft Russo)		Russo ~~[illegible]~~ C
Inspector A. Barron-Boyne	3 Custom declarations	Russo D	
Inspector E. Kerr	2 Page Visa application	Russo E	
DEC 6 - 1976	DEC 6 - 1976		
	Deft Chiappe's handwriting exemplar		F

BEFORE MISHLER, CH.J.

Date:

File Number: 73CR164

USA Plaintiff

Attorney

V/S

FRANCOIS CHIAPPE Defendant

Attorney

V/S

3 rd. Party Deft

Attorney

GOVERNMENT EXHIBIT
HEARING

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
JAN 7 - 1977	JAN 7 - 1977		
BERNARD J. FRIED	ORDER	1	
Reporter H Goodman	3 Pages of notes (Mr Fried)	2	
	2 page memo 5/5/76 (Mr Fried)	3	
JAN 14 1977	JAN 14 1977		
S/A ROBERT PALUMBO			
Reporter P. Klemszewski			

Before Judge: BEFORE MISHLER, CH.J.

File Number: 73CR164

Date:

USA Plaintiff

Attorney

V/S

FRANCOIS CHIAPPE Defendant

Attorney

V/S

3 rd. Party Deft

Attorney

DEFENDANT'S EXHIBIT HEARING

WITNESS	DESCRIPTION OF EXHIBITS	IDENT.	EVIDENCE
JAN 7 - 1977	JAN 7 - 1977		
DEFT. FRANCOIS CHIAPPE	SUBPOENA	A	
Interpreter L. Clancy	"	B	
Ct Reporter H. Goodman			
JAN 1 4 1977			
Recalled DEFT FRANCOIS CHIAPPE			
Ct Reporter P. [illegible]			
Interpreter A. Baron-Boyne			
S/A JOSEPH CORCORAN			

734164

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ FEB 23 1973 ★
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
------------------------------X

UNITED STATES OF AMERICA

-against-

Criminal Folder #

FRANCOIS ROSSI, ET AL
------------------------------X

225 Cadman Plaza East
Brooklyn, New York

February 15, 1973

GRAND JURY MINUTES

Presented by:

THOMAS P. PUCCIO, ESQ.
Assistant United States Attorney

Reported by:

Elizabeth A. Ng

Witness:

MICHEL NICOLI

2

③

MICHEL NICOLI, after being sworn, through the interpreter, was examined and testified as follows:

MARGARITA MENSA, an interpreter, was sworn to interpret the questions and answers put to her as follows:

EXAMINATION BY

MR. PUCCIO:

Q Will you state your name for the record, please.

A Michel Nicoli.

Q Mr. Nicoli, how old are you?

A Forty-two.

Q Where were you born?

A In Marseille, France.

Q On what date?

A December 7, 1930.

Q Are you presently married?

A No.

Q During the year 1965, did you meet a man known as Francois Rossi?

A Yes.

Q In what country did you meet this man?

A In Buenos Aires, Argentina.

MR. PUCCIO: I ask that these five photographs be marked as Grand Jury Exhibits 1 through 5.

(Whereupon, the aforementioned photographs were received and marked Grand Jury Exhibits 1 through 5 in evidence, as of this date, by the reporter.)

Q I show you Grand Jury Exhibit 1. Is that a photograph of Francois Rossi?

A Yes.

Q During the year 1965 did you also meet a man called Francois Chiappe?

A Yes.

Q Where did you meet Francois Chiappe?

A Buenos Aires, Argentina.

Q I show you Grand Jury Exhibit 2. Is this a photograph of Francois Chiappe?

A Yes. Francois Chiappe.

MR. PUCCIO: I offer Grand jury Exhibits 1 and 2 into evidence.

Q Subsequently, did you and Francois Rossi and Francois Chiappe agree to work together in the narcotics business?

A Yes.

Q As a result of this agreement did you and Rossi and Chiappe arrange to send heroin to the United States during the years 1965 and 1966?

A Yes.

Q During those years did you and Francois Rossi carry heroin into the United States on your bodies?

A Yes.

Q During 1965 and 1966 was this heroin sold in New York City?

A Yes, in New York.

Q Did you and Rossi and Chiappe share in the profits of this enterprise during the years 1965 and 1966?

A Yes.

Q I direct your attention now, Mr. Nicoli, to May of 1967, during the month of May, 1967, did you and Rossi and Chiappe recruit an individual called Elio Paolo Gigante for the heroin traffic?

A Yes.

Q Did you first meet Gigante in Buenos Aires, Argentina?

A Yes, in Buenos Aires.

Q What was his occupation at that time?

A He was a steward with Avianca Airlines.

Q Did you and Rossi and Chiappe speak to Gigante about possibly using the airlines as a means to transport heroin into the United States?

A Yes.

Q During the month of June 1967 did you meet with Gigante in Bogota, Colombia?

A Yes.

Q At that time were further arrangements made between you and Gigante concerning the transporting of the heroin?

A Yes.

Q During June of 1967 were you in New York City for the purpose of receiving heroin from Gigante?

A Yes.

Q Where in New York City had you agreed to meet him to receive the heroin?

A At the Hotel Lexington.

Q Did you go to the Hotel Lexington at that time?

A Yes.

Q Was Gigante there?

A No.

Q As a result did you place a phone call to his home in Bogota, Colombia from New York?

A Yes.

Q Did he answer the phone and were you able to speak with him?

A Yes.

Q What did he say?

A He told me that he was sick.

Q Did this mean to you that the police had possibly arrested him?

A Yes.

Q As a result did you leave New York?

A Yes, immediately.

Q During July of 1967 did you meet with Chiappe and Rossi in Buenos Aires and discuss with them the problem regarding Gigante?

A Yes.

Q Did they tell you that Gigante had been arrested in Bogota, Colombia and approximately fourteen kilograms of heroin had been seized there?

A Yes.

Q Subsequently was Gigante able to arrange for his release from prison in Bogota and also was he able to arrange to get some of the heroin back from the police, to your knowledge?

A Yes.

Q Was this heroin that Gigante was able to obtain from the police ultimately delivered to the United States?

A Yes.

Q Around this time did a person called Miguel Russo become involved with your trafficking organization?

A Yes.

Q I show you Grand Jury Exhibit 3. Is that a photograph of Miguel Russo?

A Yes.

MR. PUCCIO: I offer that into evidence.

Q Was it Miguel Russo that delivered the heroin that Gigante was able to get back from the police to New York City?

A Yes.

Q Did Russo deliver to you in New York?

A Yes, to me.

Q How many kilos were there?

A There were about twelve and a half, thirteen kilos.

Q Did you deliver the twelve and a half or thirteen kilos to a buyer?

A Yes.

Q During October 1967 were you again in New York City to receive heroin?

A Yes.

Q How many kilos were involved in this transaction?

A Nine.

Q Who delivered the nine kilograms to you in New York City?

A It was Mr. Miguel Russo.

Q Did you deliver these nine kilos to the customer?

A Yes.

Q Were the profits from the nine kilogram shipment that you just mentioned and the twelve and a half to thirteen kilogram shipment that you mentioned previously equally divided between you and Rossi and Chiappe?

A Yes.

Q With respect to the two shipments, to these two previous shipments that you have just mentioned, who would bring the money back to South America?

A I did.

Q I direct your attention now, Mr. Nicoli, to January of 1968. At that time did Francois Rossi travel in South America to Rome, Italy in order to meet a man called Paul Paganacci?

A Yes.

Q When Marcello returned from Italy, did he tell you that Paul Paganacci had agreed to supply you and Marcello with heroin?

A Yes.

Q Did Marcello tell you at that time how many kilograms would be involved in the first shipment?

A Yes.

Q By the way,, Mr. Nicoli, I have used the name Marcello. Was Francois Rossi also known by the name of Marcello?

A Yes.

Q Mr. Nicoli, how many kilograms did Marcello tell you would be involved in the shipment of Mr. Paganacci?

A Forty.

Q Did Marcello tell you how the forty kilograms would come from Europe to the United States?

A Yes.

Q Explain to us the route that the forty kilograms were to take.

A From France to Mexico. From Mexico to San Antonio. From San Antonio to New York.

Q Were you told by Marcello at that time who would be taking the heroin from France to Mexico?

A All I know is that it was going to be a Mexican.

Q During February of 1968 did you enter the United States at Miami, Florida in order to make preparations for this forty kilogram delivery?

A Yes.

Q At that time were you stopped by Customs and questioned?

A Yes.

Q Shortly thereafter, did you depart from Miami to New York?

A Yes.

Q Did you ultimately go back to South America without accomplishing anything?

A Yes.

Q During the month of March 1968 did you travel from Montevideo, Uruguay to John F. Kennedy

Airport in Queens, New York?

A Yes.

Q At that time were you arrested?

A Yes.

Q Were you sent to jail?

A Yes.

Q During April 1968 were you released from jail?

A Yes.

Q Where did you go after you were released from jail?

A I went to Buenos Aires.

Q Before you went to Buenos Aires,. did you stay at anyone's home in New York?

A Yes.

Q Who did you stay with?

A I stayed in Florencio Gonzales' home.

Q Was he your buyer for heroin in New York?

A Yes.

Q While you were at Florencio Gonzales' home, did a person called Dino come from South America to see you?

A Yes.

Q Did Dino tell you that Marcello had sent him to take your place in the forty kilogram delivery?

A Yes.

Q Did Dino tell you that he was to go to San Antonio to pick up the forty kilograms from the Mexican?

A Yes.

Q Subsequently did you return to Buenos Aires?

A Yes.

Q Was that forty kilogram transaction consummated?

A Yes.

Q Was it Dino who picked up the forty kilograms in San Antonio and delivered them to the buyer in New York?

A Yes, it was Dino.

Q Did you and Marcello receive a share of the profits from this transaction?

A Yes.

Q Was the forty kilogram transaction consummated during May or June of 1968?

A Yes.

Q In or about November of the same year, 1968, were arrangements made by you and Marcello for an eighty kilogram transaction?

A Yes.

Q Was this eighty kilograms of heroin to be introduced into the United States the same way as the forty kilograms of heroin?

A Yes.

Q Prior to the eighty kilogram deal, did Marcello travel to Italy to meet with Paul Paganacci?

A Yes.

Q When he returned, did Marcello tell you that arrangements had been made with Paul Paganacci for the delivery of the eighty kilograms of heroin?

A Yes.

Q Was it Dino who again went to San Antonio, picked up the eighty kilograms and delivered them to the buyer in New York?

A Yes.

Q Was the money received from this deal ultimately brought down to Buenos Aires?

A Yes.

Q Did there come a time when Marcello traveled from South America to Italy with money for Paul Paganacci?

A Yes.

Q Did you also travel from Buenos Aires to Rome, Italy with money for Paul Paganacci?

A Yes.

Q Had Marcello arrived in Italy before you?

A Yes, before me.

Q Was this in December, approximately December 1968?

A Yes.

Q Was the money you brought to Italy, money that you had received in connection with the eighty kilogram deal?

A Yes. You mean that I took to Italy?

Q Yes.

A Yes.

Q While in Italy, did you and Marcello meet with Paul Paganacci?

A Yes.

Q Where in Italy did you meet with him?

A It was in Rome, at Marcello's apartment.

Q At that time did Paganacci make reference to a future transaction in your presence?

A Yes.

Q I direct your attention now to approximately April 1969. At that time did you and Marcello arrange for the shipment of approximately thirty kilograms of heroin into the United States?

A Yes.

Q At that time were you living in Buenos Airest or Rio de Janeiro?

A Rio.

Q Had Marcello called you concerning this thirty kilogram transaction?

A Yes.

Q Subsequent to his call, did you go to Buenos Aires to see him concerning this?

A Yes.

Q Did you personally make an investment in this transaction?

A Yes.

Q How much money did you invest, approximately?

A Approximately $20,000.

Q How much money did you receive as profits?

A Between $25,000 and $30,000.

Q Was the thirty kilograms of heroin also received from Paul Paganacci?

A Yes.

Q In or about June 1969, did Marcello send 100 kilograms of heroin into the United States?

A Yes.

Q Do you know who delivered this heroin to the customer in the United States or arranged for that delivery?

A It was Mariano.

Q Is that Mariano Warden?

A Yes.

Q Did you personally have an investment in this 100 kilogram transaction, Mr. Nicoli?

A No.

Q Was it Marcello who told you that Mariano Warden made the delivery in the United States?

A Yes.

Q Did Mariano Warden himself tell you that he had made this delivery for Marcello?

A Yes, also.

Q In or about January 1970 were you contacted? Were you telephoned by Marcello concerning another narcotics transaction?

A Yes.

Q Did this shipment involve approximately sixty kilograms?

A Yes.

Q Did you personally invest with Marcello in this shipment?

A Yes.

Q Was this shipment delivered to the United States?

A Yes.

Q Was this shipment also -- shipment of heroin also supplied by Paul Paganacci?

A Yes.

Q Did Marcello tell you that he had made arrangements with Paul Paganacci concerning this deal?

A Yes.

Q In or about April 1970 were you telephoned by Marcello concerning another sixty kilogram transaction?

A Yes.

Q At that time did you travel from Rio de Janeiro to Buenos Aires?

A Yes.

Q In Buenos Aires, did you meet with a man called Cesar Melchiore and another man called Felice Bonetti concerning this transaction?

A Yes.

Q Did they tell you they would handle the delivery in the United States, that is, Felice Bonetti and Cesar Melchiore?

A Yes.

Q Did they ultimately make the delivery in the United States?

A Yes.

Q You and Marcello shared in the profits from this transaction, did you not?

A Yes.

Q This shipment was also supplied by Paul Paganacci, was it not?

A Yes.

Q In or about December 1970, did Marcello telephone you concerning another sixty kilogram heroin transaction?

A Yes.

Q As a result of this phone call, did you go from Rio de Janeiro to Buenos Aires and meet with Marcello?

A Yes.

Q Did you also invest in this sixty kilogram transaction?

A Yes.

Q Did Marcello tell you that this sixty kilograms was also supplied by Paul Paganacci?

A Yes, also.

Q Was this sixty kilograms ultimately introduced into the United States?

A Yes.

Q Do you know who made the arrangements for the delivery into the United States?

A It was Cesar Melchiore.

Q Mr. Nicoli, I show you Grand Jury Exhibit 4. Is that a photograph of Gigante?

A Yes.

Q The same Gigante you mentioned during your testimony?

A Yes.

Q I show you Grand Jury Exhibit 5. Is that a photograph of Cesar Melchiore who you mentioned during your testimony?

A Yes.

MR. PUCCIO: I offer those two photographs, Grand Jury Exhibits 4 and 5 into evidence.

I have no further questions.

Any questions by the Jury?

(No response.)

THE FOREMAN: You are excused.

(Whereupon, the witness was excused and withdrew.)

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★ OCT 6 1976 ★
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-------------------------------------x

UNITED STATES OF AMERICA

-v-

FRANCOIS CHIAPPE,
Defendant.

-------------------------------------x

73 Cr. 164

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavits of FRANCOIS CHIAPPE and GINO E. GALLINA, the accompanying Memorandum of Law and the prior proceedings herein, the undersigned will move this Court on the 8th, day of October, 1976, at 9 a.m., for an order dismissing the above indictment or, in the alternative for a hearing, under the due process grounds set forth in United States v. Toscanino, 500 F2d 267 (2d Cir., 1974) and for such other and further relief as the Court deems just and proper.

DATED: October 5, 1976
New York, New York

Yours, Etc.

GINO E. GALLINA
Attorney for Defendant
30 Broad Street
New York, N.Y. 10004
(212) 425-1060

cc: Hon. David Trager
United States Attorney

Attn: Peter Schlam, Esq.
Assistant U.S. Attorney

Nancy Rosner, Esq.
Counsel for co-defendant Russo

(22)
FC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----------------------------------x

UNITED STATES OF AMERICA | 73 Cr 164

-v- | **AFFIDAVIT**

FRANCOIS CHIAPPE,
Defendant.

-----------------------------------x

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

FRANCOIS CHIAPPE, being duly sworn, deposes and says:

1. I am the defendant above named, am fully familiar with the facts and circumstances of this matter, and make this affidavit in support of my attorney's motion to dismiss the indictment.

2. In 1973, an attempt was made to extradict me (as well as my present co-defendant MIGUEL RUSSO) from Argentina, on the same indictment I am presently charged with, but the Courts refused to extradict me because the crime charged was not within the terms of the applicable U.S. - Argentina extradiction treaty.

3. On May 21, 1976, I was driving with my wife in our home town of La Falda, in the province of Cordoba, Argentina; three cars surrounded ours and many armed men ordered me to get out. As my wife and I got out of the car we were immediately set upon and beaten with hands, feet, gun butts and black jacks, by these men. I was then tied up, blind-folded, put on the floor of a car and driven

away. I knew nothing of my wife's condition or whereabouts and have not seen her again.

4. I was forcibly injected twice, during a ride to what I believe was an airport (I was kept blindfolded). I was then put on a plane and flown for 1 1/2 - 2 hours to another place. I was continuously beaten during this time.

5. After the plane landed I was taken to another place where the ropes were removed from my wrists and I was put into a straight jacket. I was put into a van with others and taken to another place. There were two men and a woman who were there with me and they told me that they had also been abducted.

6. We were kept at this place for several days and, at one point, although still blindfolded, I was forced to sign my name on some papers. At the end of this period we were formally turned over to American drug agents and flown to this country.

7. As a result of the almost continuous beatings I received, I had several large gashes in my head, open wounds on my ankle, my left shoulder and my wrists and all of my teeth had been forcibly knocked out of the top of my mouth.*

---

* When I first appeared in Court in this country I said that no American agent had beaten me (Mins. 5/27/76 at 8). What I meant by this was that no American agent had beaten me after I was formally arrested and put on a plane for this country (Mins. 6/4/76 at 9-10). As Judge Mishler observed, the effects of the beatings I (as well as Mr. Russo) received were still quite visible two weeks after they had been inflicted (Id at 12-15). Since I was blindfolded I do not know who beat me, but I do know I heard English being spoken. For further information on this matter, I respectfully refer the Court to the affidavit of my counsel.

8. Although I was blind-folded throughout these events, I could hear what went on around me and I heard the English language used repeatedly. (Although I do not speak or understand English well I can understand the language roughly). I cannot say if those who spoke English struck me, but I know they were present when this was done.

WHEREFORE, it is requested that the motion be granted and the indictment dismissed.*

Chiappe François

FRANCOIS CHIAPPE

Sworn to before me this

day of October, 1976.

GINO E. GALLINA
Notary Public, State of New York
No. 1354700
Qualified in Westchester County
Commission Expires March 30, 197

Notary Public

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*Although I understand that this affidavit is to be submitted to the Court in English, which I do not understand, it was read to me in Spanish before I signed it.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---x

UNITED STATES OF AMERICA

73 Cr. 164

-v-

AFFIDAVIT

FRANCOIS CHIAPPE,
Defendant.

---x

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

GINO E. GALLINA, being duly sworn, deposes and says:

1. I am the attorney for Francois Chiappe, am fully familiar with the facts and circumstances of this case and make this affidavit in support of the relief requested. I specifically make this affidavit to show how all of the facts set forth in Mr. Chiappe's affidavit have been confirmed by other sources.

2. The Government admitted that "we were unsuccessful in obtaining [Chiappe and Russo's] return to this country "after their indictment in 1973 (Mins. 5/27/76 at 5-6). I have obtained and had translated, the following documents from Argentina: an affidavit of May 28, 1973 from the Argentinian Federal Prosecutor concerning "Chiappe, Francois, his extradition requested by the Embassy of the United States of America," recommending that extradition be denied. (Exhibit 1, attached hereto); an order of the Argentinian Court dated May 30, 1973 which appears to adopt this position (Exhibit 2); and the opinion of an Argentinian appeals court dated September 28, 1973 affirming the denial (by the

same judge as in Exhibit two) of a request for the extradiction of Miguel Russo (Exhibit 3)*.

3. In addition to Mrs. Margarita Naval Chiappe, the defendant's wife, I have been able to locate several other witnesses to the defendant's abduction and they all confirm his account; Mrs. Chiappe, Lopez Tressa, Oscar Cinollo, Rosa Bazan, Nicholas Bauchero, Regina Eugenia Zarate, Esther Theresa Szulman, Luis Alberto Lareau, and Benito Eladoro Quieroga have all told me, and will so testify under oath, ** that the abduction occurred as follows:

At 3:30 p.m. on May 21st, 1976, on the 25th of May, Bahia Blanca Street in La Falda, they saw a number of non-uniformed Argentine federal police beat the defendant and his wife;*** these persons were accompanied by two English-speaking persons. Someone apparently called the local police because they arrived and demanded identification from everyone. All of the "Federal Police" showed identification but when it was demanded of the English-speaking persons, one of the "Federal Police" stepped forward and spoke with the local police and prevented them from speaking further with the English speaking persons.* The defendant was then taken away in a car.

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* I am attempting to obtain the actual decree denying extradiction on Chiappe (assuming that it is not Exhibit 2) and as soon as I have done so I will send it to the Court. However, since Chiappe and Russo are co-indictees, the denial of Russo's extradiction (and the affirmance thereof) make it clear that extradiction was also sought and denied as to Chiappe.

** All of these persons have refused to come to this country and a motion, filed simultaneously with this motion, will be made for permission to depose them in Argentina.

*** It is not at all clear that these men actually were Argentinian federal police officers. The Daily News of September 23, 1976 (at p. 69) carried a dispatch entitled "Argentina: terror in the streets," which contained a statement that right-wing "death squads ... have identified themselves as policemen, and they have been seen with regulation weapons and vehicles." I have written to the author of this article, asking if he has any knowledge if this was done in Chiappe's case and I shall inform the Court of any response I receive.

4. Although I have not yet been able to obtain direct corroboration of the defendant's mistreatment between the initial abduction and being formally turned over to DEA, all of the facts support the defendant's sworn statement that:

a) The brutalities inflicted upon Mr. Chiappe were still visible when he appeared in Court on June 4, 1976, some two weeks after their infliction, and:

b) An article about the abduction in Newsweek on August 16, 1976 (p. 57) states:

> "Because expelled persons
> are legally entitled to choose
> their destinations, the official
> line is that the trio [Chiappe,
> Russo and Yolanda Sarmiento]
> 'opted' for the United States-
> and possible jail terms"
> (emphasis added)

This comports with Mr. Chiappe's statement that he was forced to sign his name to something while he was being held.

---

* Mrs. Chiappe has advised me that the person who prevented the interrogation of the English-speaking persons is one Lopez Tressa. He told Mrs. Chiappe that he was the "Secretary of Information of the State" and that the English-speaking persons were Americans. Mrs Chiappe is attempting to prevail on Mr. Tressa to give her a sworn statement to this effect.

c) Interestingly enough, although the "official line" is that Mr. Chiappe and the others requested expulsion to the United States, the expulsion document finally provided by the prosecutor does not support that "line".* This document (Exhibit 4) purports to be an official expulsion decree, but it is highly suspect for several reasons: it does not state the act or crime which caused the expulsion, it does not state the place to which Mr. Chiappe was being expelled, and, most interestingly, it has the wrong identity number for Francois Chiappe' (the decree refers to #7.159.174 whereas Mr. Chiappe's number, as shown on the identity card which was seized from him at the time of his arrest (Exhibit 5) is 92.001.957).

d) Dr. Bernardo Bideman, an internationally recognized criminal lawyer, who was retained by Mr. Chiappe's family after his abduction, told me the following: Pursuant to Argentinian law, he filed a writ of Habeas Corpus demanding Mr. Chiappe's production. The Government filed a response stating that they were not holding Mr. Chiappe and did not know of his whereabouts.** The Argentinian Court ordered that Mr. Chiappe not be expelled or extradicted or otherwise removed from Argentina, pending further proceedings.***

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* It was probably decided that not even the most gullible judge would believe that these three allegedly sophisticated master criminals would voluntarily consent to go to a country which wanted to prosecute them and put them in prison for twenty years or more.

** This is further support for our contention that the "expulsion" documents are fraudulent.

*** I am endeavoring to secure from Dr. Bideman the papers in connection with this matter.

(5) I am aware that a protest from Argentina would normally be required under Toscanino, and Dr. Bideman has informed me that he is taking steps to secure such a protest. It will be our position, however, that if we can demonstrate the participation of, or acquiescence by, the Argentinian Government in the kidnaping and brutality, then no protest can be required. This would be particularly so if this country had participated in these acts, for neither our Government nor our Courts could ask for a protest from a country whose legal processes had been subverted by this country.

(6) It is our position that Mr. Chiappe was kidnaped, held and tortured by non-governmental persons, with or without the aid or acquiescence of the Government, and then turned over to the DEA, or he was arrested, held and tortured by the Government and then, in knowing violation of the order of the Argentinian Court, turned over to the DEA. In either case, the presence of the Government of this country, through its agents, was constant and pervasive.

WHEREFORE, the motion should be granted and the indictment dismissed, or, in the alternative, there should be a full hearing.

GINO E. GALLINA

Sworn to before me this

5th day of October, 1976

Helen Costello

Notary Public

HELEN COSTELLO
Notary Public, State of New York
No. 24-4519527
Qualified in Kings County
Commission Expires March 30, 1978

NATIONAL JUDICIARY

Your honor:

MIGUEL ANGEL ALMEYRA, Federal Prosecutor, in the documents 34/73, "CHIAPPE, François, his extradition requested by the Embassy of the U. S. A.," in proceedings before Court Clerk No. 3, do say to Your Honor:

That, in accordance with what is prescribed by Art. 656 of the C. Pr. Cr., we hereby express our views regarding the origin of the suit.

I

1. On the 8th of March last, through our Foreign Office, the United States of America succeeded in obtaining the provisional arrest of the French national, François CHIAPPE, at that time detained in this city by order of the National Justice, in a Criminal Indictment. Such position was in response to the fact of the subject's being accused before the Justice of the Eastern District Court of the State of New York, for the felony of illicit association committed from Jan. 1st, 1965 to Feb. 15th last, upon having imported into the requesting country, in the period between those dates, large quantities of heroin, in violation of the U. S. Code, Title 21, Arts. 173, 174, 846 and 963.

The precautionary measure to which we address ourselves was supported by the new extradition treaty signed in Washington on Jan. 21, 1972 (see fs. 1/2 and 19/20).

2. The provisional arrest having been effected, the relevant documents -- duly legalized and translated -- were attached to the file. They run from fs. 21 to fs. 71 and from fs. 80 to fs. 158 and, in compliance with the statutes of Art. 653 of the Procedural Code regarding penal matters, the unsworn statement of the accused was entered in fs. 166 for identification purposes.

II

3. The point of departure for the inquiry into the pertinence of the extradition request in question is constituted by the precise determination of respective mandatory law that governs it; an issue that acquires certain contours in

EXHIBIT I

the case, since, within the period in which the demand claims the illicit activity took place, two legal instruments have successively been in force which have governed the matter in question very differently. One should notice, then, the importance of such an elucidation, since the simultaneous force of both treaties is not imagined, and on the other hand it is a definitively established criterion of the Supreme Court of Justice of the Nation ("Rulings," 261:94) that, by treaty, extradition should be punctiliously and strictly enacted according to its provisions, a point of view that, moreover, was adopted by our formal legislation (C. cit., art. 648) and has been firmly upheld by doctrine (Cf., inter al.: Vico, Carlos, "Treatise on Private International Law," Buenos Aires, 1956, vol. II, p. 262). In other words, it is necessary to establish from the outset which of the two international agreements has applicable effect in the case.

4. The determination of this point at issue obliges us, ineluctably, to analyze the fact upon which the suit is based.

Let us not overlook the fact that in proceedings that involve any passive extradition case, the limit of the argument, in principle, rests with those aspects that D'Albora determines in "Notes on the procedural side of extradition." (See "Revista Argentina de Derecho Procesal," 1968, I, p. 38), in which he says that it is not appropriate to deal with the fundamentals of the question, nor argue about whether or not the commission of the felony or the guilt of the accused has been proved. (Cf. C. S. J. N., "Rulings" 236:306). But neither should we forget that the power of principle is not absolute. The same Court, in "Rulings" 189:118, has admitted, by way of exception, the analysis of certain overriding circumstances, such as the sojourn of the accused in the country demanding extradition at the time that the felony was committed.

In our case, such circumstances are of no significance since, according to the Grand Jury indictment -- fs. 24/6 -- the felonious behavior of CHIAPPE would have been undertaken from Buenos Aires; but they are of significance, especially in the matter referring to the period within which the felonious activity would have taken place which is thereto imputed, and which is indicated in this document as being from the 1st of Jan., 1965 until the date on which the indictment was filed, that is, the 15th of Feb. of the current year.

The point bears singular relevance, because there is evidence in these documents (see fs. 4) that CHIAPPE is found, since Sept. 12, 1972, to have been affected by the preventive detention that has been ordered in the proceedings, due to illicit association and the illegal entry of narcotics, that have been presented to the National Court in Criminal Indictment No. 31, Court Clerk No. 119, whose evidence -- which we have examined personally -- clearly shows that he was detained on the 31st of Aug. of the year in question (fs. 211 et. seq. of the cited antecedent) remaining deprived of his freedom until now without interruption.

This means that, contrary to what has been affirmed by the Grand Jury, the felonious activity of the defendant cannot have continued beyond the date just mentioned. And we want to make a point of precisely this.

5. The exchange of ratifications of the Extradition Treaty made with the U. S. A. -- B. O. of the 13th of Sept., 1972 -- approved by law 19.764 of Aug. 3, 1972, took place in this city on Sept. 15th last (See "La Nación" of the same date), and in accordance with the stipulations of Art. 22 therein, was in force as of that time for both signatory parties.

It is fitting to ask, then, if that agreement is the one that should bear on the present request for extradition since, as has been shown in the preceding section, it is based on acts which, if committed, would have been performed prior to the time of the ratification exchange.

6. This point at issue -- that is: of the temporary force of the new ordinance -- which brings us to the problem of the validity, in extradition

matters, of the principle of the most favorable interpretation of the law, since the new extradition law is broader than its predecessor in regards to prosecution. Among our criminologists only Jimenez de Asúa concretely set forth the point, indicating that "if a treaty or international convention is transformed into internal law and modifies the previous statutes, the rules regarding non-application of the most freedom-restrictive criminal provisions shall be applied," by which "if an international extradition treaty extends the limits of these, in the face of the statutes of an internal law, the Judge should abide by the latter and not the former." (see, "Treatise on Criminal Law," Buenos Aires, 1950, vol. II, p. 565, para. 723.)

Such a point of view, nevertheless does not escape contention. In the Argentine judicial system, the non-retroactivity of the law only is constitutionally guaranteed in penal matters sensu stricto, so that non-penal laws can be retroactively applied (Cf. Salvat-Romero del Prado, "Treatise on Argentine Civil Law," Parte General, Buenos Aires, 1958, vol. I, p. 189). It is because of this that the proceduralists -- and extradition comes very near to procedural penal law -- support the rule of tempus regit processum (Cf. inter. al.: Díaz, Clemente A., "Institutions of Procedural Law," Parte General, Buenos Aires, 1968, vol. I, p. 69 and following), which is translated into the nonexistence of a right to be tried under the ordinance in force at the time of the judicial matter in question (Cf. Palacio, Lino, "Manual of Civil Law Procedure," Buenos Aires, vol. I, p. 22; Oderigo, Mario A., "Lessons in Procedural Law," Buenos Aires, 1967, vol. I, p. 161), although there is no lack of those who would sustain certain concessions in the application of the principle of leniency. (See, Claría Olmedo, Jorge A., "Treatise of Penal Law Procedure," Buenos Aires, 1960, vol. I, p. 144).

7. Nevertheless, since the very treaty invoked in the request provides standards which allow the question of its applicable term to be resolved, there

is no need to turn to either the principle of leniency which is established in Art. 2 of the Penal Code, or to the general rule of Art. 3 of the Civil Code, whose hierarchy, for good measure, is subordinated within the general area of the state as regards what can be internationally agreed (Cf. Goldschmidt, Werner, "International Law and Argentine Internal Law," in "E. D.," vol. 7, p. 184.)

In effect: the new extradition agreement with the U. S. A. establishes a successive legal implementation, without a solution of continuity, with the treaty signed by both parties in 1896. At the moment that the former took effect, the latter lapsed ope legis. And, such is a reasonable solution. Because in dealing with different statutes regarding the regulation of the same question, a simultaneous or co-effective implementation is not imagined. However, the new ordinance tolerates the re-application of the predecessor, as Art. 22 establishes that " . . . the crimes that figure in said 1896 treaty and that have been committed before the beginning of the term of this Treaty shall continue to be subject to extradition in accordance with the statutes of that Treaty."

To establish the re-application of the "terminated and supplanted" ordinance it is clearly important to subordinate to its term the situations that preexisted the new agreement, and in parallel fashion, to reject the applicability of this new instrument for such hypotheses; and the latter, under the force of similar provisions, can only achieve effect beginning with those deeds performed since it went into effect, and it should not, therefor, function retroactively, as in the maxim, "in the face of the silence of its regulations" (Arg. Art. 3 of the Civil Code). It should not be lost from view, finally, that to use the laws in such a fashion is, in principle, against nature. (Cf. Borda, G., "The Reform of the Civil Code," in "E. D.," vol. 28, p. 807). It is clear to us, then, that the applicable law in the case remains the 1896 Treaty.

III

8. The crimes upon which the extradition of François CHIAPPE is based are not set forth in the applicable statute; and this circumstance is decisive to the resolution of the case. Because, even if the extradition should accord with "extensive" criteria (C. S. J. N., "Rulings," 189:118), due to the fact that it is of just and universal benefit that the trial of tho defendants be by judges in the place in which they may have committed their crimes (id, "Rulings," 216:225; 259:270), it should not be forgotten that such extralegal considerations cannot prevail over the norms comprised in the Argentine law in force, which rests in the law, and in matters of extradition it imposes an ineluctable subordination to the declarations that, in numeruss claussus, have been internationally convened (id, "Rulings," 261:94).

IV

9. The suggested solution naturally excludes the consideration of the questions put forth in return by the defense regarding the lapse of the statute of limitations on the alleged acts, and the jurisdiction of the Argentine Tribunals, as a result of the parallel prosecution of CHIAPPE in this country for some deeds that are also included in the suit.

For the reasons given above, this Public Ministry is of the Opinion that Your Honor should not approve the extradition request for François CHIAPPE that has been prepared by the United States Authorities.

Government Attorney's Office,
May 28, 1973

(signature)

Miguel Angel Almeyra
Federal Prosecutor

ERROR.-

Buenos Aires, May 30, 1973.-

Bear in mind what has been dictated by the Prosecutor, and see in the newspaper articles that François Chiappe is to be f[illegible]t large, and issue a communication to the Federal Penitenciary Ser[illegible]s to be informed regarding the veracity of such stories, in which case it shall be indicated when and how he regained his freedom and whether or not until today he has not been detained.

(signature)

Leopoldo Isaurralde
Federal Justice

It was carried out on the same day. Let it be recorded.

(initials)

EXHIBIT 2

NATIONAL JUDICIARY

8883 - RUSSO MICHEL
Extradition requested by the Embassy of the U. S. A.
Judge Isaurralde - Clerk Landivar.

Buenos Aires, September 28, 1973

WHEREAS, AND CONSIDERING:

That these proceedings come to the cognizance of the Tribunal by virtue of the appeal interposed in fs. 182 by the Prosecutor against the decree of fs. 177, which denies the extradition of Michel Russo or Miguel Russo as requested by the District Court of the United States of America for the Eastern District of New York.

That, the Defense, in its memorandum of fs. 192, in the first term, asks that the prosecutor's appeal be declared improperly admitted, due to the opposition of the representative of the Public Ministry in fs. 172 to the extradition, and by default, the appealed sentence be confirmed. In turn, the Court Solicitor issues fs. 200 requiring therewith the confirmation of the decree.

That the appeal interposed by the Prosecutor in fs. 182 has been properly admitted, as it is based upon reiterated pronouncements of the Supreme Court of Justice of the Nation, which are cited in the respective judicial decree, and they tend to make feasible more than a single brief in cases "capable of affecting international relations." ("Rulings," 235-964). It should be so declared.

That, in regards to the merits of the case in question, it would be superfluous to consider the majority of the arguments adduced by the Defense in its writ of fs. 163, reproduced in its memorandum of fs. 192, as the ground alleged by the Prosecutor in fs. 172 is decisive to the judgement of the Court. In effect, there is no doubt whatever, due to the date of Russo's detention in the Republic of Argentina which, according to the certificate in fs. 176 occured on August 30, 1972, that case "sub judice" should be governed by the provisions of the

EXHIBIT 3

Extradition Treaty signed by the United States of America and the Republic of Argentina on September 26, 1896, as the later Convention, approved by the Law-Decree 19.764/72, had only taken effect as of September 15, 1972, and it could not be retroactively applied in this case because, due to its scope, it constitutes in part a substantive penal law, and it is covered by Art. 18 of the National Constitution. And, being so, it is not fit to consider the power of the Executive as "de facto" in matters of international treaties nor the alleged abrogation of this treaty by Law 20.509.

That, therefore, and as a result of the failure of the judicial authorities of the United States of America to include the offense that is the object of the petition being acted on in the limitative enumeration of Art. 2 of the 1896 Treaty, the extradition that has been formally requested in fs. 1, with the accompanying relevant documents in fs. 61 and 145, has been properly denied.

By reason of these deliberations, and in conformity with what has been opined by the Court Solicitor, BE IT RESOLVED: 1st) TO FIND PROPERLY ADMITTED the appeal interposed in fs. 182 by the Prosecutor; 2nd) TO CONFIRM the appealed sentence of fs. 177, which DENIES the extradition of MICHEL RUSSO or MIGUEL RUSSO requested by the District Court of the United States of America for the Eastern District of New York; and 3rd) To fix the honorarium of Dr. Teófilo Lafuente at the sum of three hundred and fifty pesos, for his work on the case.

This sentence shall be published and recorded.

Enrique Ramos Mejía

Ambrosio Romero Carranza

Gerardo Peña Guzmán

ERROR.-

Buenos Aires, May 30, 1973.-

Bear in mind what has been dictated by the Prosecutor, and see in the newspaper articles that François Chiappe is to be found at large, and issue a communication to the Federal Penitenciary Service so as to be informed regarding the veracity of such stories, in which case it shall be indicated when and how he regained his freedom and whether or not until today he has not been detained.

(signature)

Leopoldo Isaurralde
Federal Justice

It was carried out on the same day. Let it be recorded.

(initials)

EXHIBIT 2

THE NATIONAL EXECUTIVE POWER.

M 518

BUENOS AIRES, May 21st., 1976

IN VIEW of the provisions contained in Law no. 21.259 and,

WHEREAS:

The National Executive Power has the authority to order the expulsion of foreign individuals, whether they be permanent residents or non-permanent, who are involved in acts or activities cited in article 1st. of the above mentioned Law.-

The French citizen Francisco CHIAPPE, holder of Identity Card No. 7.159.174 (P.F.A.) is undoubtedly covered by the provisions of Law No. 21.259, since he has carried out -in Argentina- activities that substantially affect the social welfare and the public order and are contrary to the permanent interests of the Republic.-

In accordance to the principles established by the mentioned Law, the resolution passed by the National Executive Power is not appealable and it has to be executed within a peremptory delay of five days to run from the date on which the resolution has been notified.

Therefore,

THE PRESIDENT OF THE ARGENTINIAN NATION

DECREES:

ARTICLE No. 1.- It is ordered that the French citizen Francisco CHIAPPE, holder of Identity Card No. 7.159.174 (P.F.A.), be expelled from the Republic of Argentina and not to be allowed to re-enter the country in compliance with the terms expressed in Law No. 21.259.

ARTICLE No. 2.- The expellee is to be held under arrest until the time the measure ordered in Article No. 1 goes into effect.

ARTICLE No. 3.- The present decree will be immediately executed by the Ministry of the Interior.

ARTICLE No. 4.- Let it be known, let it be published, let it be forwarded to the National Administration of the Official Registry and let it be filed.-

DECREE No. 518

(Two illegible signatures)

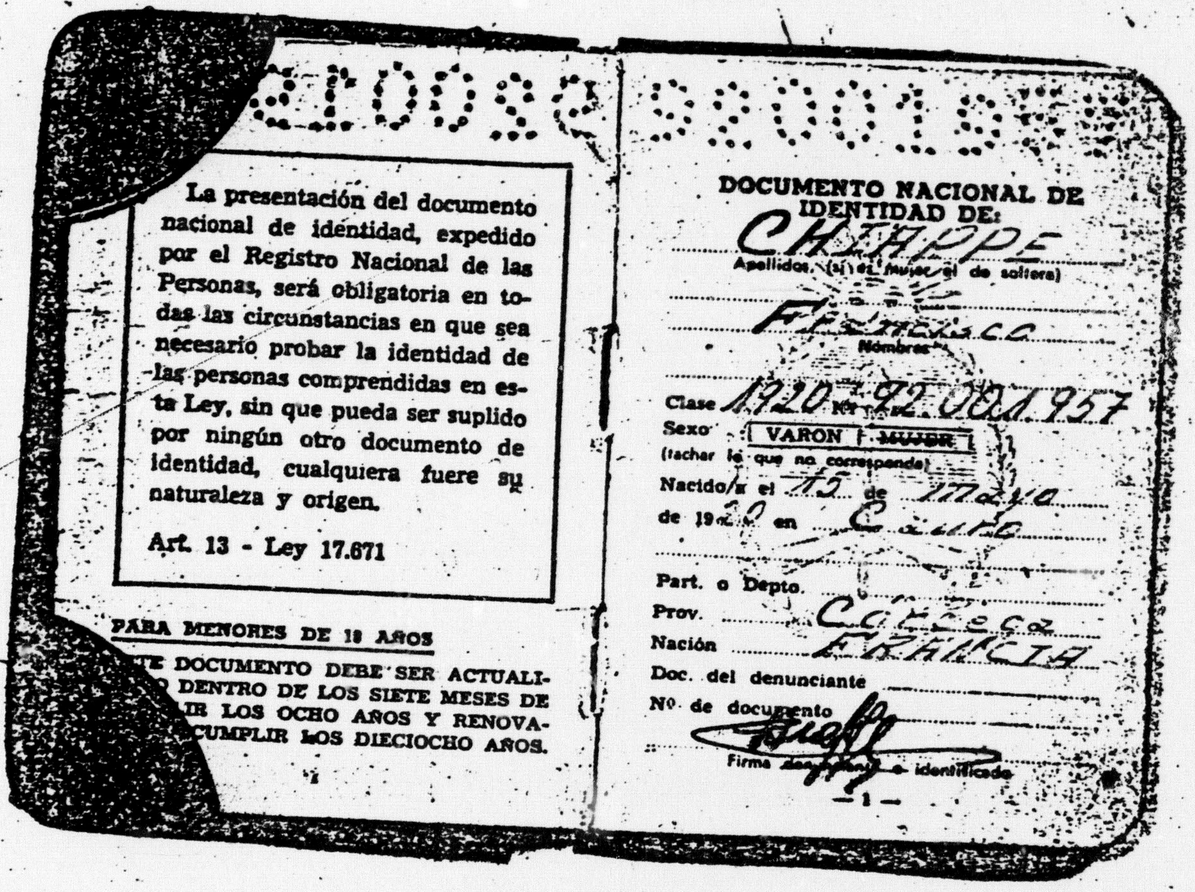
Brigadier General Albano E. HARGUINDEGUY
Minister of the Interior

This is an exact and accurate copy of the original

Buenos Aires July 16, 1976.

(Illegible Signature)
Lieutenant Colonel JUSTO J. ROJAS ALCORTA

EXHIBIT 4



La presentación del documento nacional de identidad, expedido por el Registro Nacional de las Personas, será obligatoria en todas las circunstancias en que sea necesario probar la identidad de las personas comprendidas en esta Ley, sin que pueda ser suplido por ningún otro documento de identidad, cualquiera fuere su naturaleza y origen.

Art. 13 - Ley 17.671

PARA MENORES DE 18 AÑOS

TE DOCUMENTO DEBE SER ACTUALI-
O DENTRO DE LOS SIETE MESES DE
IR LOS OCHO AÑOS Y RENOVA-
CUMPLIR LOS DIECIOCHO AÑOS.

92001957

DOCUMENTO NACIONAL DE IDENTIDAD DE:

CHIAPPE
Apellidos (si es mujer el de soltera)

Francisco
Nombres

Clase 1920 Nº 92.001.957

Sexo VARON ~~MUJER~~
(tachar lo que no corresponde)

Nacido/a el 15 de mayo
de 1920 en Cauro

Part. o Depto.
Prov. Corsega
Nación FRANCIA
Doc. del denunciante
Nº de documento

Firma del titular o identificado

—1—

EXHIBIT 5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

--------------------------------------x

UNITED STATES OF AMERICA

73 CR ~~239~~ 164

- v -

NOTICE OF MOTION and MEMORANDUM

FRANCOIS CHIAPPE,

Defendant.

--------------------------------------x

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ MAR 28 1977 ★
TIME A.M.
P.M.

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of GINO E. GALLINA, the accompanying Memorandum of Law, and the prior proceedings herein, the undersigned will move this Court on the 7th day of January, 1977 at 10:00 a.m. for an order dismissing the above indictment or, in the alternative for a hearing, under the due process grounds set forth in United States v. Toscanino, 500 F2d 267 (2d Cir. 1974) and for such other and further relief as the Court deems just and proper.

DATED: January 6, 1977

New York, New York

YOURS, etc.,

GINO E. GALLINA
Attorney for Defendant
30 Broad Street
New York, New York 10004
(212) 425-1060

TO: HON. DAVID TRAGER
United States Attorney
Eastern District of New York
Attention: Peter Schlam, Esq.
Assistant U.S. Attorney

40 FC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---x

UNITED STATES OF AMERICA, 73 CR 239

- v - **AFFIDAVIT**

FRANCOIS CHIAPPE,

Defendant.

---x

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

GINO E. GALLINA, being duly sworn, deposes and says:

1. I am the attorney for FRANCOIS CHIAPPE, and am fully familiar with the facts and circumstances of this case and make this affidavit in support of the relief requested.

2. On October 5, 1976 defendant moved to dismiss the indictment under the due process grounds set forth in United States v. Toscanino, 500 F.2d 267 (2d Cir. 1974) by way of affidavits from Mrs. Chiappe and myself, as well as supporting documents and memoranda of law.

3. On November 20, 1976 the Court heard the video-taped depositions of defendant's witnesses from Argentina, but specifically reserved hearing the Toscanino portion of these depositions until after the trial. (See transcript of Nov. 20, 1976 p. 3). The reporter, however, did transcribe the testimony of the witnesses in the Court's absence and their testimony will be incorporated as part of defendant's motion.

4. This motion is filed as a supplement to the original October 1976 motion and is intended to amplify defendant's originally presented

arguments as well as to raise further due process grounds as concerns burden of proof for this motion.

G E Gallina

GINO E. GALLINA

Sworn to before me this

7th day of January, 1977.

Helen Costello

Notary Public

HELEN COSTELLO
Notary Public, State of New York
No. 24-4519527
Qualified in Kings County
Commission Expires March 30, 1978

POINT I

A HEARING PURSUANT TO DEFENDANT'S MOTION TO DISMISS THE INDICTMENT SHOULD BE HELD.

It is defendant's position that he has come forward with sufficient credible supporting evidence to warrant a hearing pursuant to the requirements of U.S. v. Toscanino, 500 F.2d 267 (2d Cir. 1974) and its progeny.

Defendant, in his own affidavit made part of the original motion to dismiss the indictment filed in October of 1976, has in detail described the beatings he received with fists, feet, gun butts, and blackjacks at the time of his abduction in LaFalda, Argentina. He also described the injuries he received as a result of continuous beatings, such as several lacerations of his head and other parts of his body and the loss of all his top front teeth.

Of even greater consequence, he described the mode of torture which can be labelled sensory deprivation, whereby he was blindfolded (his vision is very poor even without his glasses), for a continuous period of several days until about 20 minutes into his flight to the United States, kept in isolation for several days while confined in a straight-jacket and forcibly injected with sedative drugs.

Clearly, inhuman treatment at the hands of his abductors has been established.

It is further defendant's position that he has come forward with sufficient proof of his illegal abduction. This has been demonstrated via the kidnapping, the fraudulent expulsion order, and the violation of the Argentine Court's direction that he not be removed from that country. This latter documentary proof was offered in conjunction with the original October 1976 motion.

It is defendant's position that the presence of United States officials during all phases of the abduction is demonstrated by his affidavit, wherein he stated that during the period he was blindfolded he could hear the English language being used repeatedly by persons who were present during all the phases of the abduction.

Of course, the fact remains that after being held for several days, the defendant was removed from Argentina in a specially chartered DC-8 in which the only passengers were about twenty DEA agents, the defendant, and two other abductees. We submit that the inference is clear that the abduction was conceived and directed by United States authorities and executed initially and directly by their Argentinian Agents.

The latter conclusions are supported by the August 16, 1976 Newsweek article (pages 56-57) wherein various unnamed government and DEA officials are quoted as saying that the so-called "expulsions" were a result of either political pressure from the U.S. Government in the threat of cutting off foreign aid, or more direct payment of monies or ammunition in order to get the individuals wanted.** Of course, these individuals--including defendant Chiappe-- were not available to the U.S. Government by any legal means. The fact that the "abductions" and "expulsions" took place immediately after the denial of an extradition request by the U.S. Government gives further evidence to the claim of U.S. involvement.

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* Defendant also intends to offer the video-taped deposition taken in Argentina of 2 other witnesses to the abduction. On of the witnesses, a Mrs. Sulman, described the actual beatings and abduction and the presence of "strangers" giving orders. The otherwitness is the defendant's wife, Margarita Chiappe. She was also subject to various beatings at the time of the abduction of the defendant at La Falda on May 21, 1976. She describes a person she knew as a member of the Argentine Secret Police, one Lopez-Tresa, who was giving the orders concerning the beatings and abduction. She further swore that with Lopez-Tresa were two foreigners in civilian clothes who were speaking English with him during the entire abduction at La Falda. (See Transcript of November 20, 1976 pages 150-158, pages 183-to 238).

** Defendant has prepared subpoenas to the authors of this article to compell the production of the sources of the quotes in the article.

It is our position that the formal protest requirement should not be applicable to this case. We urge this Court to take judicial notice of the fact that the government of Argentina, as it has existed for the past several years, is one which denies due process of law as we know it as is demonstrated by the activities of death squads, and the denial of basic human rights. [See annexed news articles]. It is further our position that by putting political and financial pressure on Argentina, the U.S. government has corrupted the Argentine government--such as it may be--to violate its own laws, and that no protest ought to be required. U.S. v. Murzano, 537 F.2d 257 (7th Cir. 1976); cf. Elkins v. U.S., 364 U.S. 206 (1960); Wang Sun v. U.S., 371 U.S. 471 (1963).

For the above stated reasons, defendant submits that a hearing is mandated. See U.S. v. Orsini, 402 F.Supp. 1218 (E.D.N.Y. 1975).

POINT II

THE BURDEN SHOULD SHIFT TO THE GOVERNMENT TO PROVE THAT U.S. AGENTS WERE NOT INVOLVED IN THE ILLEGAL ABDUCTION OF THE DEFENDANT.

It is defendant's position that the burden of proof placed on him by the law is basically unfair and a denial of due process of the law.

It defies logic and common sense to expect a man caught in the midst of a sudden, unexpected fifteen minute incident during which he was subjected to extreme violence, to be able to prove that American agents were actually present or involved. Obviously, the best that can be done under these circumstances is to identify the presence of English speaking strangers in civilian dress. It can hardly be expected under the circumstances that these individuals would be standing in the middle of a street in LaFalda, Argentina wearing DEA identification pinned on their outer garments for all to see.

Further, immediately after his forcible abduction from the street, and for the next several days thereafter, Mr. Chiappe was deprived of his sensory aids by being blindfolded, straight-jacketed, sedated, and placed in confinement. Surely under these circumstances it is unrealistic to expect him to be able to identify the presence of anyone other than through the only sense which was left to him--hearing.

The torture and sensory deprivation, lasted until the time that his blindfold was removed and he was read his rights by the now identifiable American agents when he was in international air-space on his way to the United States in a Braniff DC-8 which had been especially chartered and manned by the DEA. What happened thereafter, which the defendant *does* know about is, of course, not relevant to the motion before the Court.

It is our position that the facts of defendant's abduction and the planning thereof, are within the exclusive knowledge of the U.S. Government and its agents. Thus, the burden cannot be placed on Mr. Chiappe to prove facts which, of necessity, are not within his power to prove.

Basic fairness and due process requires that once the defendant comes forward with a claim that his rights were violated *to the extent which he is capable of,* the burden should then shift to the government to at least make out a *prima facie* case of non-involvement. This is particularly so in a case such as the one at bar, where the only information is exclusively within the knowledge of the U.S. Government and its agents. This argument comes within the spirit of such basic fairness cases as Brady v. Maryland, 373 U.S. 83 (1963). This information, of course, has nothing to do with the question of defendant's guilt or innocense. Rather, it goes to the more fundamental question of whether he should be before the Court at all to force that factual determination.

Thus, defendant is unable to discuss information such as:

1. the agents who were present in Argentina during the abduction;
2. when, where, and between whom the arrangements were made to deliver defendant to the U.S.;
3. what directives or documents exist in the CIA or State Department files concerning political aid relative to securing defendant, or others, by the U.S. Government.

Certainly sufficient basis for beliving that such information exists can be extracted from articles such as the one which appeared in Newsweek and from even a casual evaluation of the entire incident by even the most naive observer.

To proceed by means of subpoenas which may be subject to claims of various types of privilege and motions to quash, or by means of the Freedom of Information Act which can be both costly and extremely time-consuming, places an unfair if not impossible burden on the defendant which amounts to a denial of due process of the law.

Thus, defendant submits that the burden should at this point be shifted to the Government in proving prima facie that the defendant's illegal abduction was taken by or at the direction of United States officials.

Respectfully submitted,

GINO E. GALLINA
Attorney for Defendant
30 Broad Street
New York, New York 10004
(212) 425-1060

By:
JURIS G. CEDERBAUMS

THE NEW YORK TIMES, MONDAY, JUNE 28, 1976

Argentine Fighting Both Leftist Subversion and Counterterrorism by Righ

By JUAN de ONIS
Special to The New York Times

BUENOS AIRES, June 27—Terrorism by left-wing extremists in Argentina has provoked counterterrorism by security forces that the military Government here is trying to bring under control.

Argentina has become very dangerous for anyone suspected of having connections with the subversive guerrilla organizations that are active here.

At least three military intelligence services, the federal police and some armed right-wing "paramilitary" groups have been trying to penetrate and destroy the revolutionary guerrilla forces.

Some actions by these counter groups have taken the Government, led by Gen. Jorge Rafael Videla, by surprise, such as the kidnapping on June 11 of 25 Chilean and Uruguayan refugees from shelters where they lived under United Nations auspices.

Gen. Albano Harguindeguy, the Minister of Interior, did not learn about the kidnapping until eight hours after the refugees had been seized by armed men from hotels a block away from a police station.

The Government had announced that there were, among the 20,000 refugees from Chile, Brazil, Uruguay and Bolivia who have come here in recent years, persons whose continued presence in Argentina was "not compatible with our internal security."

Conflict With the U.N.

But the kidnapping caused a conflict with the United Nations and an international uproar that the Government viewed with concern at a time when the Minister of Economy, José Martinez de Hoz, was negotiating in the United States for financial help.

Under heavy pressure from General Videla, the kidnapped refugees were located by navy intelligence officials and were freed. Some had been tortured, according to United Nations officials.

This incident, coming after the assassination here of Juan José Torres Gonzales, a former President of Bolivia, and of two former members of the Uruguayan Congress, Zelmar Michellini and Hector Gutierrez Ruiz, by unidentified persons, led the Government to try to exercise more central control over the antisubversive campaign.

Gen. Arturo A. Corbetta, the new federal police chief named after the assassination by a terrorist bomb of Gen. Cesareo Cardozo last week, said in a televised speech Friday night that the subversion required "a high concentration of centralized violence" by the state in reply.

But he added that this repressive violence must be "official, public and controlled, exercised with decision, but also with the prudence of men who know their duties."

This is the position of General Videla and a majority of the leaders of the armed forces. In the context of the strong emotions aroused among the military by guerrilla violence against retired officers, isolated policemen and the families of serving officers, the idea of "controlled violence" is considered moderate here.

To back up the Government's position, the military junta decreed changes in the penal code that restore the death penalty for anyone convicted of causing the death of any member of the armed forces, the judiciary or a public official on duty. The death sentence by firing squad is to be carried out within 48 hours of conviction by a military court.

If this system is enforced, the military Government will have legal capital punishment as a method of "controlled violence" against the present methods of the right-wing extremists who have been killing hundreds of persons considered "subversive." Capital punishment was abolished here in 1972.

The midnight arrest and disappearance of people suspected of guerrilla connections, or with political records linked to the "left," has been commonplace in the last few months. The military Government has not yet published a comprehensive list of people arrested since March 24, when the Government of President Isabel Martinez de Perón was overthrown, but thousands have been detained, and in many cases relatives have been unable to get any information.

Many Habeas Corpus Actions

The federal courts in Buenos Aires have received more than 600 habeas corpus petitions since April. Many are for persons who have been arrested by security forces and whose whereabouts are not known.

Carmen Beatriz Frascotto de Roman, a psychologist whose husband was arrested May 7 by a group of young men in civilian clothes with federal police identification, has filed fou petitions in different courts spent hours at police headquarters and obtained an interview with Gen. Carlos Suarez Mason, commander of the Firs Army Corps here.

None of these official sources could provide any information about her husband, Nicolas who in 1972 was a union delegate at an automobile brake factory where there were serious political conflicts between right-wing Peronists and leftists. These eventually led Mr Roman to quit his job and go to work in a bank.

At the neighborhood police station, Mrs. Roman said, detectives refused to go to her house to take fingerprints left by the abductors, who drank whisky while they talked with Mr. Roman before taking him away.

TREES, LAKES, GREEN GRASS
THE FRESH AIR FUND

Argentina: terror in the streets

By MERWIN K. SIGALE
News Special Correspondent

Second of a series

Buenos Aires, Argentina—"This refuge is our prison. We are afraid to go outside," the Chilean said softly.

As if to emphasize his point, he leaned over a cot and pulled down a window shade as a precaution against prying eyes in the United Nations-maintained shelter.

This man, who dreaded the consequences if his name were published, is one of thousands of Latin American refugees for whom fear is a constant, nagging reality in South America's second largest country.

Most are leftists, in flight from right-wing governments back home. But the predominant mood of Argentina's armed forces, especially since they seized power in March, is anti-Marxist, and there is no love for aliens of another persuasion.

Here are some recent incidents that make the refugees shudder:

- A Chilean is snatched from the doorway of a relief agency, disfigured with acid and later dumped from an automobile.
- Twenty-four Chileans and a Paraguayan are kidnaped from two small hotels, some are tortured, and all are threatened with death unless they

The ruling junta of Argentina, headed by Lt.Gen. Jorge Videla (center), complains that accounts of violence are exaggerated.

United Nations High Commission for Refugees.

Prim, a 32-year-old Frenchman, said that Latin American refugees "don't

and confirmed the diplomat's account of anti-Semitism on the part of their captors.

A spokesman for the eight said that

from a passing car. Mutilated bodies turn up in a field, bearing notes saying, "I was a Montonero," one of the two leftist guerrilla organizations. The

Semitic slogans, though none of the captives is Jewish.

- A former Bolivian president, in exile since he was overthrown, is kidnaped and found slain with three bullets in his head.
- Two Uruguayan ex-congressmen are dragged from their rooms and murdered. Their bodies are found together with those of an Uruguayan couple.

Blame 'death squads'

Right-wing "death squads" have been blamed for most of the violent acts against refugees. But these vigilantes are reported to have close ties to, and even membership in, the security forces. Some have identified themselves as policemen, and they have been seen with regulation weapons and vehicles.

The plight of the refugees is not, however, the principal focus of the right vs. left struggle. It has actually been submerged in a much fiercer contest between security forces and Argentine Marxist guerrillas—a contest in which the death squads have intervened in lawless fashion against leftists, real or suspected, foreign or native-born.

More than 800 persons have died in politically motivated strife since Jan. 1, and more than 600 of those deaths have occurred since the overthrow of President Maria Estela (Isabel) Peron on March 24.

Recently, the armed forces have dealt major blows to the guerrillas, killing some of their top leaders and uncovering major caches of arms and propaganda.

At the same time, the death squads seem to have regarded the advent of a strongly anti-Communist military government as a cue to step up their terror against leftists, native and foreign. The guerrillas, too, are masters of terrorism, and hardly a day passes without some new outrage by one side or the other. Guerrillas are often caught; the vigilantes are not.

"What bothers us most is that irregular forces, unknown persons, are kidnaping every day," said Guy Prim, deputy regional representative of the [illegible] the commission for refugee status. Many want help in obtaining visas to go abroad, but few countries are receptive.

The UN protection that comes with refugee status has its limitations. "It is with the collaboration of the government," Prim said. "We do not have a police or an army."

Fifteen refugees were slain last year, Prim said, and he predicted that the 1976 toll would surpass that number. In addition, he said, there have been frequent detentions by the police for identity checks, as well as kidnapings, torture and threats carried out by "unknown persons."

A majority of the 25,000 refugees came to Argentina for political reasons. Prim said the largest group consists of 14,000 Chileans, most of them supporters of the late Marxist President Salvador Allende, who was ousted in 1973 by a military coup. There are also members of Chile's Christian Democratic Party and other parties of the non-Marxist left.

Some of the refugees are considered security risks. As a group, they are regarded as an economic burden at a time when jobs are scarce. Most are forbidden to work, though some do menial jobs for exploitive wages. Handouts from the UN commission or church agencies sustain others.

Sing Nazi songs

Anti-Semitism appears to have been involved in several incidents, although there is no visible evidence that it is widespread or that it is a motive for terrorism against refugees.

A European diplomat, who asked not to be identified, said that the kidnapers of the 24 Chileans and one Paraguayan "sang Nazi songs and shouted slogans against the Jews."

At least two other refugees who were kidnaped have reported that anti-Semitism was shown by their captors, the diplomat said.

While the 25 who were kidnaped together awaited UN arrangements to relocate them abroad, eight of them met with a reporter in the lobby of their cheap hotel near downtown Buenos Aires [illegible] blindfold was removed briefly. The kidnapers, who he said were armed and numbered 30 to 35, sang Nazi songs and forced the refugees to chant, "Viva Pinochet!" the spokesman said. Gen. Augusto Pinochet led the coup that toppled Allende and is now the president of Chile.

In a small room occupied by 11 Chileans in a UN-maintained refuge, a Virginia Slims poster on the wall shows a woman slaving over a washboard, and the caption in English, "You've come a long way, baby." The incongruity is lost on the Chileans, who speak no English.

Police raided the shelters a few days after the coup in March, and there were widespread arrests of refugees. One Chilean said that everyone in his group was released after periods ranging from 12 to 25 days.

Use psychological pressures

"They handled us like experimental rabbits," he said. "All of those arrested were subjected to blows and psychological pressures to demoralize us. They would tell us they are going to shoot us or send us back to Chile."

There have been other charges of torture in connection with some of the thousands of Argentines imprisoned since the military coup. Scores of other Argentines and some refugees have simply disappeared, with no indication of whether they were arrested by security forces or spirited away by death squads.

The refugees have appealed to international bodies, foreign embassies and journalists, and some resorted to hunger strikes. Their situation has received little notice in the Argentine press, which observes self-censorship and which is supposed to report on violence only when the government issues a communique about it. Official communiques about the refugees are rare.

The junta headed by Lt. Gen. Jorge R. Videla has complained that accounts of violence, in fact, has not disrupted the normal pace of life, and it goes unseen by most Argentines and visitors.

Guerrillas are ambushed in their urban hideaway. Policemen are shot [illegible] by his daughter's girl friend, a secret guerrilla sympathizer. Such is the bizarre nature of Argentina's largely unseen "war."

The more visible face of Argentina is that of a nation emerging painfully from the political and economic disorder of the Peron era.

Inflation chief concern

Inflation, which soared to an annual rate of 566% by the time of the coup, is the junta's chief concern. The skyrocketing cost of living has been slowed as a result of wage controls and a tight monetary and fiscal policy. But the cost has been a deepening recession, with the working class—the long-time core of Peronist strength—getting the worst of it.

The junta has turned to a more free-enterprise, market-oriented economy, replacing the populism that marked the rule of Juan Peron and then of his widow. They had fostered an expanded government role in the economy and programs to redistribute income in favor of the workers.

The red carpet is out again for foreign investment. Relations between Argentina and the United States are good, and the Ford administration has not exerted economic pressure here over the human rights question as it has in neighboring Chile.

U.S. economic analysts predicted that if the junta's stabilization program works as expected, recovery could begin late this year.

Political recovery will be slower. Politics is banned, Congress dissolved, the press leashed, the once powerful labor unions under the military's thumb.

Mrs. Peron is under house arrest and is being prosecuted on corruption charges. Her military successors have promised an eventual return to "a republican, representative and federal democracy," but not before there is public order, a restructed economy and a national sense of responsibility.

"There can be no calendar for such a goal," Videla has said. "Only the circumstances will tell."

Next: Trouble in Chile

Terror in Argentina

To the Editor:

We are concerned for the fate of many South American politicians and labor leaders who were trapped as refugees in Argentina when the military junta of General Videla took power three months ago.

The unpunished terrorist raids by death squads against local and refugee democrats and socialists have multiplied, culminating in the public kidnapping and torture in Buenos Aires of 25 persons who were guests of refugee agencies.

The Argentine Government not only condones such open terror but participates in it. We have received reliable reports, for example, that the Chilean miners' union leader, Mario Muñoz Salas, has been hounded into hiding, his Buenos Aires home broken into and his family beaten by a military patrol which tried to take one of the children as hostage. The Committee to Save Mario Muñoz (Box 633 Canal Street Station, New York, N. Y. 10013) has collected detailed information on this and other cases.

An international protest campaign may be the only way to save the lives of Mario Muñoz and other progressive refugees in Argentina, succeeding where the Human Rights Commission of the U.N. and the O.A.S. have moved only ineffectually. It may also give pause to the Ford Administration and the State Department in their callous course of support to the military dictatorships of Latin America.

NOAM CHOMSKY, S. E. LURIA
Cambridge, Mass., June 14, 197

NY Times 6/28/76
P26 col 3

Times 11/23/76 P.5

15 More Deaths Reported In Argentine Violence

BUENOS AIRES, Nov. 22 (AP)—Security sources reported today that 15 more people died in Argentine political violence, bringing the death toll this year to 1,296.

During the weekend, they said, six suspected leftist guerrillas were shot and killed in clashes with security forces in Buenos Aires, nearby La Plata and in the northern province of San Juan. In addition, a man and a woman were killed when they were caught in crossfire, the sources said.

Six other suspected guerrillas were gunned down today in clashes with security forces in La Plata, the sources said. The capital of Buenos Aires Province, situated 35 miles south of here, it has been the scene of frequent clashes.

A bullet-riddled body found in a Buenos Aires river was presumed to have been killed by a right-wing death squad.

Gen. Jorge Videla, army chief and head of the military junta, told visting Canadian journalists that the extreme left was almost wiped out. "Most of the guerrilla leaders and a large number of guerrilla fighters have been killed or arrested," he said.

U.S. SAYS 6 NATIONS CURB HUMAN RIGHTS

N.Y. Times 1/2/78
p. 1 col 2

But the State Department Asks That Military Aid Be Continued

By BERNARD GWERTZMAN

Special to The New York Times

WASHINGTON, Jan. 1—The State Department, making its first detailed reports on human rights conditions abroad, has found that Argentina, Haiti, Indonesia, Iran, Peru and the Philippines have violated human rights to varying degrees but should nevertheless continue to receive American military support.

The reports, made public tonight by the House International Relations Committee, were submitted by the department at the committee's request. The committee asked for reports on only those six countries as an initial test of compliance with a new Congressional law mandating such human rights reports from the State Department when asked for by any member of Congress.

Last year, Secretary of State Henry A. Kissinger refused to comply with an earlier Congressional law requiring a country-by-country report on human rights violations as a means of judging whether foreign aid should be granted. He argued

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U.S. Says 6 Nations Curb Rights But Urges That Arms Aid Go On

Continued From Page 1

that such public documents only caused problems with other countries, were unfair to American allies, and did little for human rights.

In the new foreign aid bill the requirement for the human rights reports was stiffened. But at first, the department submitted the requested six reports in a classified form that barred public disclosure, in an apparent effort to reduce embarrassment to the other governments. But the reports were declassified last week when the committee protested.

The reports discuss, in dry and matter-of-fact language, alleged violations of human rights such as torture, prolonged detention without charges or trial, arbitrary arrest, and other denials of the right to life, liberty or the security of the person.

But Representative Donald M. Fraser, Democrat of Minnesota, who was a driving force to secure the reports, said today that the reports "are a lot better than I thought they'd be," although he thought the language was often too soft.

President-elect Carter criticized the Ford Administration during his campaign for not paying enough attention to human rights abroad and pledged that his administration would do more.

Few Startling Surprises

But Cyrus R. Vance, his Secretary of State-designate, has warned that in dealing with human rights violations a pragmatic approach must be followed that takes into account American security interests as well.

There are few startling surprises in the reports. Most countries involved have been accused by many organizations in recent years of various violations of human rights, and many articles have appeared in the press about them.

Indeed, in an apparent effort to reduce direct American Government involvement in the reports, the State Department often quoted Amnesty International as a source, the organization that publicizes allegations of human rights violations against political prisoners.

The State Department made it clear that even though there were violations in the six countries under study, it believed American military aid and military sales should be continued for a variety of reasons.

The foreign aid law states that it is the policy of the United States not to provide security assistance to governments that engage in "a consistent pattern of gross violations of internationally recognized human rights," except in extraordinary circumstances.

What follows is a rundown, in each of the six countries, of the human rights situation as seen by the State Department, with the accompanying recommendation on continued aid.

Argentina

The rights of life, liberty and security of person "are violated regularly" by left-wing and right-wing terrorists. Both the present and previous government have "reportedly acquiesced in violations attributable to persons associated with the Government."

The most "notorious" episode occurred last Aug. 30 when 30 leftist prisoners were executed in Pilar, in retaliation for the murder of a retired general and as a warning to the leftists.

While torture, cruel, inhuman and degrading treatment or punishment have not been a general practice, "such methods are reportedly used by the security forces to extract information from some prisoners, particularly suspected or proven terrorists."

The security forces have detained "numerous persons" for investigation or questioning under the State of Siege or other laws. There is no right of habeas corpus under that law.

Subject Raised Repeatedly

The State Department said the subject of human rights "has been raised repeatedly" with Argentina in 1976 and no other subject had been discussed more often with the present Government.

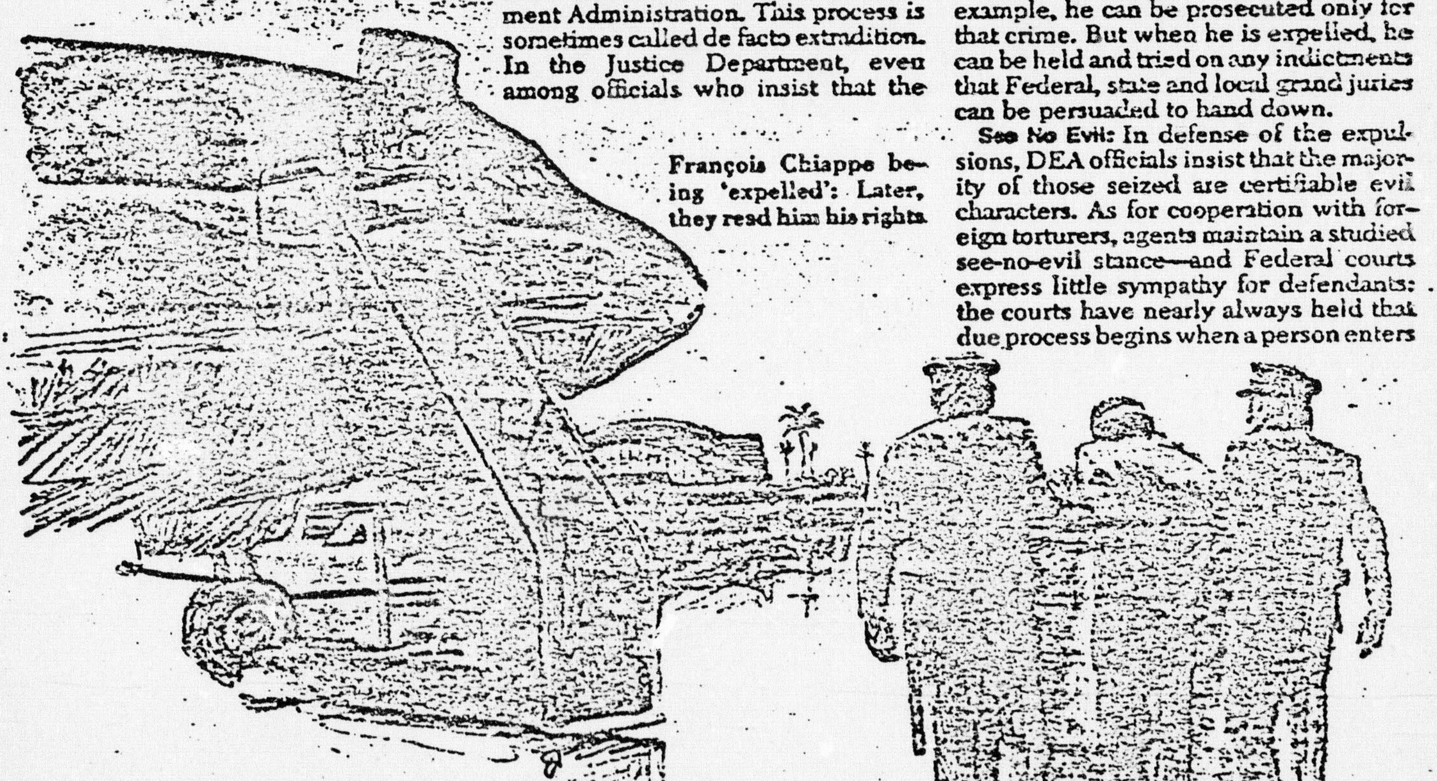
The United States has pressed for access to and improved treatment of American political prisoners; concern has been expressed over reports of mass murders and indiscriminate killing of political refugees and priests, the need to control vigilante groups, the safety of political refugees, anti-Semitism, and the need to publish names, bring to trial or release prisoners.

American security assistance for the current fiscal year is $48.4 million in military sales credits and less than $700,000 in direct grants for training.

The department said that assistance should be continued to show "our desire to cooperate militarily with a country which has 1,000 miles of coastline on the South Atlantic." It also allows the United States "the possibility of improved communication with the Argentine military who have always influenced events in their country and are now the dominant sector."

The Drug Vigilantes

François Chiappe traveled first class to the United States—in a chartered Braniff DC-8 that cost the U.S. Government $62,500. But Chiappe, who arrived in New York two months ago to face charges of conspiracy in international drug trading, did not enjoy the trip. His front teeth, some of which had been broken off at the gums during his police send-off from Argentina, were badly in need of dental help. His body was covered with bruises and there were three ugly slits across his forehead. It is doubtful that he paid much attention when, as soon as his plane was in international air space, U.S. agents read him his rights.



François Chiappe being 'expelled': Later, they read him his rights

Mitchell [illegible]

Christian David, another shadowy figure who has allegedly dabbled in assassination as well as heroin traffic, endured an even rougher journey from Brazil several years ago. Before turning him over to U.S. agents, Brazilian police allegedly hung David upside down and applied electrodes to his ears and testicles. Shortly after his U.S. arrival, during questioning in a Federal office in lower Manhattan, David spotted some automobile jumper cables that an agent had left on a file cabinet. In terror of more shock treatments, David began banging his head furiously against a wall, trying to knock himself unconscious. "It was sort of funny," recalled an agent who was there. "No one was paying any attention to the guy."

By all official accounts, Chiappe and David are highly dubious objects of sympathy. Between them they have allegedly sent thousands of pounds of heroin into the U.S.—and ruined thousands of lives. David has been convicted and sentenced to twenty years, while Chiappe and others like him await trials in the near future. But the flight plan that brought them to American justice is a short cut with some troubling implications. Like more than 100 other foreign casualties of America's four-year-old "war on drugs," Chiappe and David were not legally extradited. Instead they were "expelled" from the countries where they resided—directly into the handcuffs of the U.S. Drug Enforcement Administration. This process is sometimes called de facto extradition. In the Justice Department, even among officials who insist that the method is necessary, it is also commonly known as kidnapping.

"These expulsions are important," says Peter Bensinger, the recently appointed chief at DEA, "because they remind drug traffickers that there is no sanctuary." They may also get results on occasion by slowing the drug flow. "We can arrest dealers on the streets and they're replaced in a matter of hours," says Bensinger. "But when we put these big dealers out of business, it causes a major disruption."

Some Federal judges, defense lawyers and State Department officials are not sure if the disruptions are worth the price. "It's an uncomfortable area," says Knute Malmborg, who handles many criminal extraditions for the State Department. "Given the high priority we have on stopping the drug traffic, it's hard to argue against the practice of informal expulsions. But the public should be aware of it, and it should be a matter of continuing debate." In the Justice Department, however, at least one middle-level official says, "No one is debating the merits of this issue. Here in the DEA, it's not a matter of concern—it's a source of amusement."

Like any vigilante system, informal expulsion has obvious hazards. There is the danger of snatching the wrong people; critics also claim that expulsions often involve U.S. agents, at least indirectly, in the kind of brutal torture that may be routine to some Latin American police—but would be unthinkable during domestic arrests. Finally, "informality" can provide a good excuse for skirting still other civil rights. When a person is formally extradited for a crime, for example, he can be prosecuted only for that crime. But when he is expelled, he can be held and tried on any indictments that Federal, state and local grand juries can be persuaded to hand down.

See No Evil: In defense of the expulsions, DEA officials insist that the majority of those seized are certifiable evil characters. As for cooperation with foreign torturers, agents maintain a studied see-no-evil stance—and Federal courts express little sympathy for defendants: the courts have nearly always held that due process begins when a person enters their jurisdiction, and how he got there is rarely a judicial concern. But the most compelling argument for the system is that it is the only one that works.

Under the varied and often archaic U.S. treaties with Latin American states, formal extradition on drug charges is all but impossible. Most extradition treaties stipulate that the crime in question must violate the laws of both countries involved, and drug dealing is not a crime in some nations. The treaties also allow

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extradition only when the defendant has committed a crime in the extraditing country—and many large dealers never set foot in the U.S. So the only quick and simple way to grab foreign drug conspirators is to exert pressure on other governments to turn them over.

The pressure can take several forms. In the landmark 1973 case that triggered the crackdown in Latin America, the Nixon Administration was determined to nab an aging Frenchman, Auguste Joseph Ricord, who was reputedly running a massive drug operation from Paraguay. When a Paraguayan court held that Ricord couldn't be extradited under existing treaties, the State Department sent Nelson Gross, whose job was to "coordinate" the international narcotics sweep, to change some minds. As U.S. officials privately tell the story, Gross told Paraguayan President Alfredo Stroessner that the U.S. was prepared to cut off $11 million in annual aid and vote against loans to Paraguay by international agencies. A week later, Paraguay's Court of Appeals voted to extradite Ricord.

Kingpin? "He was not kidnapped in the literal sense," says Ricord's New York attorney Herbert Handman. "His process was under the color of law, but that made it all the worse. The U.S. Government went to court. Then, when it lost, it managed to corrupt the judicial process of another country." Ricord turned out to be considerably less than a "kingpin," DEA officials concede privately; most major traffickers had never even heard of him. But Ricord's conspiracy conviction and his twenty-year sentence encouraged prosecutors to move ahead. "Most of these guys had thought that they had to be caught with the drugs," says one assistant U.S. attorney. "The Ricord case showed that we could go in and grab them on conspiracy charges."

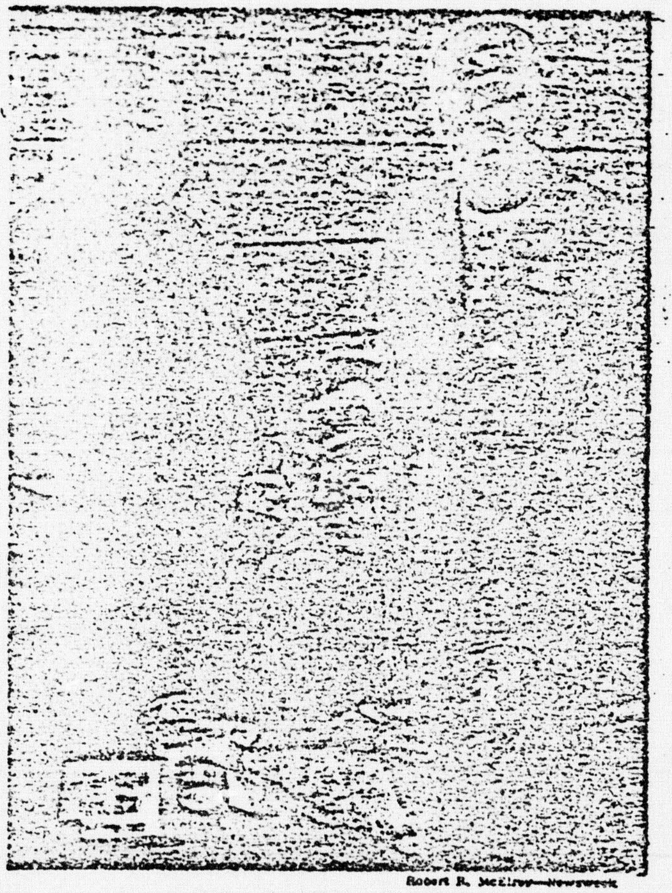
The Ricord case also marked one of the last formal drug extraditions. Agents soon decided that "expulsion" could be secured more efficiently—and more cheaply. "Clearly, we have paid for some of these people," says one Federal official. "It might not have been a specific quid pro quo, but we would give X dollars or X cases of ammunition to officials who helped get these people on planes."

The next major DEA sweep through Latin America was in Chile after the 1973 fall of President Salvador Allende. The military junta, eager to show that Allende had made Chile a haven for criminals, swiftly incarcerated and then expelled a number of the DEA's targets—allegedly fingered by U.S. agent George Frangullie. The operation netted about a score of victims, including one who turned out to be the most embarrassing mistaken-identity blunder of the expulsion program.

In search of a Chinese drug dealer named Chino Choy, Chilean police grabbed a Chinese merchant named Carlos Choy Zeballos and demanded, "Are you Choy?"

"Yes," he said—and within days he was installed in the grimy Federal House of Detention on West Street in New York. His bail was set at $1 million, and he languished in jail for three months before a public defender convinced authorities that they had the wrong Choy. Even then, Choy remained trapped in a Catch-22 nightmare. Having expelled him, the Chilean rulers didn't want him back. And since he had not "legally" entered the U.S., the Immigration and Naturalization Service refused to let him stay without an around-the-clock DEA escort.

"I am completely outraged," U.S. District Court Judge Lee Gagliardi told Choy's prosecutors. "When it was so easy for you to get him here, I cannot understand why you cannot work with the same diligence to send him home." But the international machinery does not function well in reverse. "How do you unarrest a guy," asks one former DEA official, "after you've dragged him into another continent?" So Choy remained under house arrest for another month before finding his way back to Chile. The "right" Choy was never found. The victim has since tried to get compensation from the U.S. Government, and failed.



Robert R. McElroy—Newsweek

Chiappe, Orsini, Russo in custody: Who's breaking the law?

The most recent trophies of de facto extradition are the Frenchman Chiappe, the Italian Miguel Russo and the Chilean Yolanda Sarmiento, who were resident aliens of Argentina, and the alleged French master dealer Dominique Orsini, who was abducted from Senegal. The three Argentines were billed in DEA press releases as "among the most sought-after criminal narcotics organizers in the world." Like its Chilean counterpart, the junta that ousted the Isabel Perón government in 1976 seemed anxious to please U.S. agents who sought the expulsions. Because expelled persons are legally entitled to choose their destinations, the official line is that the trio "opted" for the U.S.—and possible jail terms. But even DEA men privately snicker at that notion. "If you consider it an option when someone puts a submachine gun in your mouth and says, 'Sign this paper'," says Russo's attorney Nancy Rosner, "then they had an option."

Russo was put on trial last month. The government's only witness was less than compelling, the prosecutors were unable to come up with promised documents that were to prove Russo had been legally expelled from Argentina—and the jury wound up hung, 8-to-4 in favor of acquittal. Now, as they await further trials, the "Argentine three" are drawing new attention to the de facto extradition procedure.

Embarrassment: If the DEA is unable to back up its claims with convictions in court—or if its "most wanted" press releases have to be toned down drastically, as in the Ricord case—the Argentine "kidnap" could turn out to be another embarrassment. But even if the government wins the case, its method still remains dubious. "The man was kidnapped," says Chiappe's attorney Gino Gallina. "This was the Watergate mentality, that the end justifies the means. It demeans the whole system."

Recent DEA guidelines have, in part, modified the system by limiting the freedom of agents to work with foreign police. A bill now pending in the Senate would further curb such activities by specifically denying the DEA any direct role in foreign police operations. But down in the trenches of the war on drugs, DEA agents have so far shown no inclination to stop taking prisoners through de facto extradition. That wartime attitude may be understandable, but noncombatants may conclude that kidnapping as a policy does demean the nation.

—PETE AXTHELM with ANTHONY MARRO

UNITED STATES DISTRICT
COURT
EASTERN DISTRICT OF
NEW YORK

UNITED STATES OF AMERICA

- v -

FRANCOIS CHIAPPE,

Defendant.

NOTICE OF MOTION and MEMORANDUM OF LAW

GINO E. GALLINA
~~LENEFSKY, GALLINA, MASS & HOFFMAN~~
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NEW YORK, N. Y. 10004

(212) ~~944-1550~~
425-1060

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-v-

FRANCOIS CHIAPPE,

Defendant.

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Indictment No. 73 Cr. ~~235~~ 164

NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the annexed affidavit and memorandum of JURIS G. CEDERBAUM, and the prior proceeding herein, the undersigned will move this Court before Chief Judge Jacob Mishler, on the 14th day of January, 1977 at 10:00 a.m., for an Order permitting defendant to call or depose certain witnesses in connection with the Toscanino hearing presently before the Court, or, in the alternative that the Court on its own motion call these witnesses for purposes of the hearing, and for such further relief as this Court deems just and proper.

Dated: January 13, 1977
New York, N.Y.

YOURS, Etc.

JURIS G. CEDERBAUM
Attorney for defendant
Office of
GINO E. GALLINA
30 Broad Street
New York, N.Y. 10004
(212) 425-1060

TO: Hon. David Trager
United States Attorney
Eastern District of New York

By

PETER SCHLAM, ESQ.
Assistant U.S. Attorney

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

73 Cr. 239

-v-

AFFIDAVIT

FRANCOIS CHIAPPE,
Defendant.

-----------------------------------x

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

JURIS G. CEDERBAUMS, being duly sworn deposes and states as follows:

1. I am an attorney duly admitted to practice in the State of New York associated with GINO E. GALLINA attorney for the defendant and am fully familiar with the facts and circumstances of this case.

2. This affidavit is prepared to supplement defendant's motion made October 5, 1976 and January 7, 1977, relevant to the hearing presently before the Court.

2. In order to adequately argue defendant's position at this hearing, it will be necessary to hear or depose the following witnesses:

a) All DEA agents who went to Argentina in connection with the arrest of the defendant.

b) All DEA agents located in the Buenos Aires branch.

c) All Argentine police or their agents who participated in the abduction of Mr. Chiappe and his subsequent detention and torture prior to his transfer to the DC-8 which took him to the United States of America.

d) United States Ambassader to Argentina, Robert C. Hill.

e) DEA head Peter Bensinger.

f. All State Department and DEA records dealing with the planning and actual abduction of Francois Chiappe.

4. The defendant is without knowledge or resources necessary to either specifically identify/or obtain the information sought, which is in the exclusive control of the United States Government and the various agencies.

WHEREFORE, it is prayed that the Court secure the production of the above named witnesses and records to insure that defendant's claim at this hearing can be adequately explored.

JURIS G. CEDERBAUMS

Sworn to before me this
14th day of January, 1977

Eric J. Weiss
Notary Public

ERIC J. WEISS
Notary Public, State of New York
No. 41-4626119
Qualified in Queens County
Commission Expires March 30, 1978

MEMORANDUM

It is defendants position that the evidence and papers submitted to the Court to date require the extension of the present hearing in order that defendant's claim on the motion before the Court be properly heard.

Defendant claims that it has been adequately demonstrated in numerous news reports and magazine articles (including, but not limited to the Newsweek article already before the Court and the Penthouse article attached),* that the Drug Enforcement Agency, since its inception, has engaged in illegal activities, such as the ones claimed by the defendant, as a result of its mandated "war on drugs." It is our position that since such a pattern of conduct is demonstratable, the Court should extend the present hearing in order to fully explore every possible avenue by which defendants claim can be investigated.

There is evidence that one of the architects of the DEA policy, Col. Lucien Conein, a former C.I.A. agent brought into the White House "plumbers Unit" by E. Howard Hunt, and subsequently appointed head of the Special Operations Branch of the DEA was in fact responsible for bringing in all the techniques of war into the "war" on drugs.

Thus, the DEA, was basically a spinoff of the operation known as the White House "Plumbers Unit." The "plumbers unit," of course, declared war on domestic enemies, while the DEA declared war on international drug trafficking.

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* Counsel is presently endeavoring to collect the relevant articles on the subject by means of a systematic search and compilation which has not been concluded as of this date.

History--as well as extensive criminal litigation--has demonstrated that zealous top government figures found that it was inadequate to deal with their domestic targets within the confines of the law. Rather, there men and their agents chose to engage in clandestine, undercover operations which, when the label "National Security" was removed by the Courts, turned out to be nothing less than criminal. Yet, once the activities of the so-called "plumbers unit" were revealed by reporters such as the ones who have written about DEA activities, and reviewed repeatedly by the Courts, their activities were found to be illegal despite their stated high moral goals.

This Court will recall that the activities of the White House Plumbers Unit were overthrown--and men went to prison for --mere petty burglaries, not the gross and systematice violations of human rights which the inhuman treatment afforded persons such as the defendant attest to.

The same cast of characters who gave us the plumbers unit, created the Special Operations Branch of the DEA; the same high goals which prompted the war on domestic intelligence leaks prompted the war on drugs. And, we claim, the same mentality which found existing laws inadequate in the case of the domestic investigations has found the existing laws inadequate in the war on drugs. The excuse, of course, being that the ends justify the means and that the subjects, of course, are after all felons. The absurdety of such thinking is demonstrated as a matter of fact by the numerous cases where innocent victims have been caught in the dragnet. It is demonstrated as a matte policy, legality, or morality, that if such methods can be used in the war against "enemies," it then becomes a question of the definition of who the enemies are. In any case, in the war against "domestic enemies," the Courts have found such activities to be illegal.

In this case we know that Mr. Chiappe became one of the targets of the DEA's war on drugs. We know from the evidence that discussions were had with the Argentine Government--such as it is--to procure the person of Mr. Chiappe. The evidence shows that the Chief of the U.S. Attorney's Narcotics Division, Bernard Fried, personally went to Buenos Aires to procure Mr. Chiappe's arrest. We further know that the U.S. Ambassador, Mr. Robert Hill was part of these discussions. We know that six days after Mr. Chiappe's abduction and torture there was a specially chartered DC-8 occupied and chartered by the DEA waiting to pick up Mr. Chiappe. We know that Mr. Chiappe was received by DEA agents straight-jacketed and blind folded. We know further that after Mr. Chiappe's arrival in the United States the DEA head in Washington Peter Bensinger, stated: "The Government of Argentina should be praised for its collaboration in helping make these arrests possible, "and thanked interpol of the State Department, and the U.S. Ambassador Robert C. Hill for their help and cooperation. This collaboration is further evidenced by the false expulsion order using an identity number of a person other than Mr. Chiappe, and the incredible "consent" of Mr. Chiappe, to come to the United States, a country from which he successfully fought extradition for years. It seems perfectly clear that the abduction was planned orchestrated, and conducted by the DEA from beginning to end. To argue that since the presence by DEA agents at the instant of the actual beatings and torture of Mr. Chiappe defeats his claim that the DEA was directly responsible for it, is to ignore the obvious agency relationship.

It ill behooves the Government to wash its hands and disclaim any responsibility for the events which they set in motion, and the product, they then immediately after took into their hands. The product, of course, was the beaten, tortured, bound and blind folded person of Mr. Chiappe.

Surely an agency relationship adequately sufficient to show U.S. involvement in the inhuman treatment of Mr. Chiappe in order for this Court to secure his presence before this Court has been demonstrated.

The relevancy of the various articles presented to the Court is that they show a notorious pattern of conduct engaged in by the DEA in its "war" on drugs. This pattern is adequately demonstrated so that this Court should at least be forced to investigate whether the case at bar is another product of the pattern of illegal activities of the DEA.

As was stated in our January 7, 1977 motion, defendant, because of his physical state at the time, is ill equipped to come forward with proof more specific than what he has offered. The onus is now on the Government and on this Court to further investigate an incident which is pregnant with circumstantial evidence of the Government's illegal procedures through the DEA.

For this reason, it is necessary to call as witnesses at this hearing the persons named in the affidavit, since they are the only ones who have the direct knowledge of what really happened, how Francois Chiappe came to be where he is today.

Respectfully submitted,

JURIS G. CEDERBAUMS
Attorney for Defendant
Chiappe

Steve Wilson drove South of the Border
for a few weeks of fun
and *frijoles*. Like hundreds of other American kids,
he had never expected
to be busted on a phony drug charge and
thrown into a hellhole of a prison.

MEXICAN NIGHTMARE

There were no farewells. You don't throw a party when the place you're leaving is a maximum-security prison in the mountains of Mexico, thirty miles below the Arizona border, and the method you've chosen for your departure is likely to cause your death.

For Steve Wilson, the nearest thing to a farewell was whispered by another prisoner, an American who'd been arrested with Steve. "You're going to get killed; you're really going to get killed," he said. "We're going to miss you."

Steve agreed; he felt strongly that he would be dead by the end of the next day. Only a few hours before, he had been smashing slabs of concrete with a sledgehammer when he saw the old Volvo station wagon come through the gates of Nogales Prison. It was an early afternoon in December 1974, eighteen months after Steve had been arrested and more than four months after Richard M. Nixon had left the White House—a linking of names that is deliberate, because Steve was imprisoned as a result of Nixon's sovereign policies.

The moment Steve saw the wagon, he knew that it was the escape car which he'd arranged for through friends on the outside, and the moment he saw it he felt little pieces of his mind begin flaking away. "My heart leaped when I saw the car because I knew it was mine," he later recalled. "The only thing that had kept me sane was working on the plan to get out of there, and now that it was happening, my mind couldn't handle it. And I got a little weepy, looking at the car, and had to get out of the area."

Steve Wilson isn't usually a hysterical man. He was twenty-six at the time. Before his arrrest in Mexico he had been an alcohol-and-drug counselor in Washington, N.C., working for the state mental-health department. He had, in fact, been given a month-long vacation as a reward for a program he had developed to help addictive kids, and the irony of that award as the indirect cause of his arrest on drug charges was seldom out of his thoughts during his months in prison. He had planned his escape logically and carefully, insinuating himself into the prison administration and conning officials into trusting him, working out the plan for a breakout car with a special hidden compartment, contriving to get it into the prison, and arranging for a driver to take him across the border. Wilson is a man with a logical and methodical mind.

Or was. For after almost two years of being trapped in the maze of that special insane asylum that is modern Mexico under the influence of United States narcotics cops, frustration and anger and fear often intruded upon logic.

Steve was originally arrested on the illegal orders of a United States Drug Enforcement Administration agent and charged with possession of a phantom 350 kilos of cocaine that he never saw and that couldn't even have fit into his Volkswagen van. He had been forced to sign a confession in Spanish, which he didn't understand, and he charges that a DEA agent actively participated in the torture that broke him down. After his trial (he saw the judge only once, as a speck at the other end of the prison), Steve was told that he would be released with a small fine because his employer had intervened with the judge; but three Americans from either the State Department or the DEA later reached the judge, and Steve was then sentenced to imprisonment for five and a half years.

From the day of his arrest he had been warned by DEA agents and United States Consul employees not to make waves, but he'd made a lot of them, writing to congressmen and senators, to magazines and newspapers, to the State Department, complaining that he'd been railroaded into prison by American narcotics agents and that, instead of protecting his rights, American consular officials told him that he deserved what he got and said that the only way he would ever go home again would be in a coffin.

The threat turned out to be very real. In the autumn of 1974, a commander of prison guards told Steve that he was scheduled to be transferred to another prison farther south, but that he would never arrive there. Steve knew what that meant, because it had happened to other inmates. The procedure called for stopping in the desert for prisoners to relieve themselves, taking some select prisoners for a walk, and shooting them in the back. It was reported, in the official language, as "killed trying to escape." The inmates have another name for it: "dumped in the desert." As far as Steve knows, no Americans

BY TONY SCADUTO

ILLUSTRATION BY GUY FERY

have ever been dumped in the desert. But he did witness the killing of one American in prison. And he wonders what happened to several Americans who were transferred to other prisons and never responded to letters after they'd been taken across the desert.

And as his escape car came through the prison gates, Steve had to run back to his cell to keep from screaming at the death he expected, at the American Consul, at the DEA most of all.

The DEA, in its extralegal operations in Mexico, has become the Godfather of American law enforcement. Created out of the old Narcotics Bureau by Richard Nixon and John Mitchell in those heady days before Watergate, it brought together under one command all those scattered agencies involved in enforcing the drug laws. Its intrusion into Mexican affairs had its start back in the first year of Nixon's reign. Radical protesters tried to disrupt the 1968 Democratic convention in Chicago; the Black Panthers were stalking the land; most American kids were seen, by the White House gang, as dope-smoking revolutionaries who had driven Lyndon Johnson from office and were plotting the same fate for Richard Nixon; the White House became like a medieval castle besieged on all sides by a barbaric enemy.

What was wrong with American kids? Pernicious permissiveness, said Spiro Agnew. Sex and dope was Nixon's view. He couldn't immediately do much about sexual freedom and—according to some reports—hadn't had any sex in years and probably didn't even want to think about it. But dope was another matter. If dope were stopped, half the battle would be won.

So, in September 1969, Nixon's government set up what it called Operation Intercept at the Mexican border, bringing pressure on Mexican officials to cut off the flow of marijuana and narcotics into the United States. For ten days border patrol and customs agents mucked up the normal travel between the two countries by thoroughly searching every person and car crossing the border. The search caused hours of delay at each border station, held up Mexican workers going to jobs in the United States, and made a lot of American tourists cancel plans to travel into Mexico.

Mexico's economy is extremely dependent on American tourism, and the Mexican government caved in. It agreed to join the United States in a drug crackdown. We started giving the Mexicans about $15 million a year to finance search-and-destroy missions in the poppy fields, and we trained hundreds of Mexican cops in drug inspection and enforcement. At the same time, DEA agents were turned loose below the border to help seize big dealers; those American cops became like avenging angels, whose private mission was to put the fear of God and flag into any United States citizen who didn't seem to conform to the standards of Americanism demanded by the paranoiacs of the Oval Office.

The agents, says Steve Wilson from personal experience, acted like modern gunslinging spooks out of control, taking out their James Bond fantasies on the Mexicans, rounding up the residents of entire villages in the quest for dope, and sometimes being gunned down from ambush because the Mexicans so thoroughly hated them. There is independent evidence that DEA officials, under Nixon, actually saw their assignment to cut into the drug traffic as a "war" and tried to bring to it all the techniques of war—including assassination. According to the *Washington Post*, the man who dreamed up a plan to assassinate big-time drug dealers in Mexico was Col. Lucien Conein, a former CIA agent who appears to have had some role in the 1963 overthrow of South Vietnamese dictator Ngo Dinh Diem. In 1971, after retiring from the CIA, Conein was brought into the White House plumbers unit by E. Howard Hunt, originally to help fake evidence that John F. Kennedy had ordered Diem's murder. Conein, according to the *Post*, was involved in all the so-called Gemstone programs. In 1973, with Watergate putting a stop to those programs, Nixon moved Conein over to DEA, appointing him head of its newly formed Special Operations Branch. His job was to develop international spy networks for identifying major drug traffickers and putting a stop to their operations.

> “Steve knew that there was no way he could resist—he'd cave in and sign a confession the moment the torture started.”

Immediately upon taking his new post at the DEA, Conein recruited about a dozen CIA men into an elite squad that, according to a senior DEA official quoted by the *Post*, was "an assassination program." Although Conein denies the charge, *Post* sources insist that his plan was to murder Mexican drug traffickers with special exploding devices originally developed for the CIA. Several of Conein's agents spent months in Mexico identifying and setting up the murder victims, and the assassinations were about to begin in early 1975 when Sen. Lowell Weiker of Connecticut revealed that a consignment of sophisticated assassination weapons had been demonstrated to Conein for potential DEA purchase. The assassination bureau was promptly scrapped.

Against this background, Steve Wilson's charges are not difficult to believe. Most important, Steve's experiences and his accusations are not uniquely his own, he isn't a solitary figure standing on a mountaintop perversely hurling lightning bolts against two federal agencies. A large number of Americans who have been detained in Mexico have said that they were forced to sign confessions they couldn't read and that they were mistreated by DEA agents and consular employees. Rep. Fortney ("Pete") Stark of California, one of the few congressmen who haven't brushed off the charges as the ravings of drug addicts, has documented more than 100 cases similar to Steve's. And because a great percentage of the 550 or so Americans in Mexican prisons had no previous arrest records and were not smugglers or involved in drugs in any way, Stark has been talking about a tourist boycott, since "travel to Mexico may be dangerous to your health."

Steve was only dimly aware of all this when he decided to travel through the Southwest in the early summer of 1973. He hadn't thought very seriously about visiting Mexico, because his main goal was a slow jaunt through New Orleans, the Grand Canyon, and California. As a drug-abuse counselor, he had picked up some knowledge of narcotics laws, and he knew that Mexico wasn't a safe place for fooling with dope. But he hadn't even smoked a joint during the previous three years, and the perils of Mexico didn't cross his mind as he drove out of North Carolina in his purple 1970 Volkswagen van at the end of May. With him was a college student, Robert Allen Smith, whose parents, like Steve's, lived in New Jersey. Steve didn't know him very well, but when Allen asked whether he could come along on the trip to California, Steve welcomed the company.

They reached the West Coast in about ten days; and after hanging around a bit, Bob suggested that they go down to Tijuana. Steve said that he'd like to spend a couple of weeks driving through Mexico but refused to go near Tijuana or any other border tourist traps because Americans could get into trouble in them. Steve set down one condition before he and Bob left: no drugs. He even made Bob throw away his sinus medicine before they crossed the border.

They drove deep into Mexico, picking up hitchhiking Mexican nationals every chance they got and being invited to native homes so often that they seldom stayed in motels. Just before starting back north, they met a Mexican-Indian girl, Patty, who had been studying English and hoped to become a secretary. She wanted to go to the United States. Her relatives gave permission, and her papers were in order; so Steve took her along on the trip back to California.

On the morning of June 25, 1973, heading west in the Mexican desert about thirty miles south of San Luis de Rio Colorado, which is below Arizona, they were searched for drugs at an inspection station. They passed and were cleared through, but pulled up a short distance away because the Volkswagen was giving Steve trouble. The two men began tinkering with the engine, and Patty wandered off a hundred yards or so. A car pulled up, and five Mexicans, wearing Hawaiian-style shirts outside their pants, got out and walked over to the van. One of them pointed to the Minolta slung over Steve's shoulder and said, "It's a nice camera. We want it." Steve's first impression was that the men were bandits, and he said, "Keep your hands off it." The Mexican reached for it, and in the scuffle the camera was banged against the van. Steve was furious and was about to jump the man when another one pulled from his belt a pistol that had been hidden by his shirt and shouted that he was a *Federale*, a member of the Mexican national police force.

Patty began to run across the desert when she saw the gun drawn. A couple of the *Federales* chased her. After a few moments some shots were fired, and Steve tried to see what was being done to the girl, but she and her pursuers were out of sight, behind sand dunes. Steve remembers thinking that the sounds couldn't have been gunshots and realizing that they were. He felt anger, fear, and frustration, because he thought that he should have been able to do something to protect Patty but couldn't act with the gun aimed at him, and because his mind refused to absorb what he had seen and heard, refused to deal with it. Later, in prison, Steve met a man who said that he was Patty's brother. No one had ever heard from her again, and the family was afraid that she had been killed.

Another car filled with *Federales* pulled up after the shooting. The Mexicans held a brief conference, which neither of the Americans could understand, and then announced that they were under arrest. Their arms were handcuffed behind their backs, and they were shoved against a wall. They stood there for a long time, not understanding much except that the Mexicans had radioed somewhere and were apparently waiting for transportation for the gringo prisoners. The transportation came in about an hour—a new Cadillac Eldorado driven by an American. He was in his sixties, was very well dressed, and had white hair and freckled, blotchy skin. The *Federales* treated him with enormous respect, and it was obvious that he was an important American official of some kind.

When Steve saw the man, he assumed that he was from the American Consulate, and he told Bob, "An American, great! Now we're going to get out of this mess." But the American wouldn't talk to them and wouldn't even look at them as he drove them north with one of the Mexican cops as a guard. The only conversation was in response to the Mexican's questions about the car. "It's a company car," the American said at one point. Later Steve began to feel certain that the man was a DEA or a customs agent.

Steve and Bob were dropped off at the *Federales* station in San Luis and were taken into the office of the prosecutor for the area. He asked them several questions, and they described their run-in with the *Federales*. The prosecutor treated their arrest as a good joke on a couple of young gringos. He began typing out a report of their statements, pecking away with one finger of each hand and having trouble finding the right keys. Finally, when he finished his report, the prosecutor told his prisoners that everything would be cleared up soon and that they'd probably be released. "But we'll have to hold you a few days for investigation," he said.

They were taken off to the drunk tank, an eight-by-twelve cell in which about two dozen prisoners were crowded. The floor was cement, and in the center was a hole for the inmates to relieve themselves. But many of the Mexican prisoners were vomiting from the heroin that the authorities had sold them and were missing the hole, and the stench was dreadful. After three days, unable to eat because the plates of beans always had a few lumps of excrement floating around, and after losing about fifteen pounds each, Steve and Bob were returned to the prosecutor's office. They were filthy by then, their hair filled with lice, bodies stinking, clothing hanging loosely on them, and the prosecutor and his clerks laughed at them and said that they looked as if they'd been in the tank for a month. Steve was too weak and upset to vent his anger.

> "If all my nightmares were ever thrown into one place," Steve recalled, "it was in Nogales Prison. . . . I've never seen any place so much like hell."

The prosecutor eventually grew serious. "This pipe," he said, holding an object in front of him, "it had a little bit of hashish in it. That is much trouble for you." Steve stared at the pipe. It was Bob's, a present from an old girl friend, but it had been broken across the stem about a year before and was unusable. Later Bob explained that he had carried it out of sentiment, because he felt that it was his lucky piece, and that Steve had blacked his eye for bringing the pipe. But now Steve simply stared at it.

Bob said, "That's mine. He didn't know I had it; he told me not to bring anything like that into Mexico. I'm sorry. What can I say?" The prosecutor questioned Steve and believed him when he said that he knew nothing about the pipe, and he made a snap decision—he would hold Bob for twelve hours, to give Steve enough time to cross the border and get $300 for his friend's "fine," and when the money was paid they'd both be free to go. In the meantime they would retain Steve's wallet and credit cards and all his possessions as security for his return. Steve agreed. Any kind of extortion was better than a return to the drunk tank.

As the prosecutor typed up Steve's release papers, two tall, blond men—obviously American police officers of some kind—came banging through the door dragging in a Mexican of about fifteen who had been badly beaten. They shoved the kid against the desk and slapped him around the face, working over his already bleeding nose and lips. One of the Americans said to the prosecutor, in English "We found this." He held up a vial with a black substance in it—unrefined heroin Steve later learned—and it surprised him because he'd always thought all heroin was white.

The American cops finally noticed Steve and Bob. "Are you Americans?" the taller of the two asked.

"Yeah, I'm an American," Steve said. And the anger began to flow—anger about the girl who was probably dead in the desert, anger about his van and camera and everything else that had been stolen from him, anger at the beating these American cops had given the Mexican kid. "Who the hell do you think you are?" Steve shouted. The taller man started to say, "I'm with . . . ," but Steve wouldn't let him answer, and the anger poured out of him now: "You come down here into Mexico and beat the shit out of people. No wonder the Mexicans hate us and steal from us. You people are perpetuating what is happening to us, because you come into Mexico and abuse everybody. How would *you* feel if Mexicans were allowed into the United States to beat and arrest people? Who the hell are you, anyway?"

Finally, the taller man said: "I'm with Customs. Roger Anderson. Where are you from?"

Steve told him that he worked in Washington, N.C., and Anderson said that he'd been stationed in the Raleigh-Durham area. With *Customs*? Steve asked. Anderson insisted that he was a customs agent, later he admitted that he and his partner, Jones, were DEA agents. (The names of both DEA agents have been changed because of possible pending court action.)

"What are you guys in for?" Anderson asked.

Steve began, "Oh, nothing really . . . ." but Anderson cut him off. "That's what they all say. Don't you know when you're busted down here you're in for the hassle of your life?"

"Man, I'm in for a hassle?" Steve asked "I haven't done anything, and I'm in for a hassle?"

Now Bob exploded. "You stupid son of a

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bitch!" he shouted. "I bet you don't even have a high-school education." Steve winced at that one. It was dawning on him that he and Bob shouldn't make enemies of two men they needed as friends, but Bob rushed on, pointing at Steve and yelling. "That guy right there works for the government, and he's not going to forget what you did to that Mexican kid . . . "

Anderson signaled the other agent, Jones, who grabbed Bob by the arm and led him through a door into another room. While they were gone, Anderson gently reminisced about North Carolina, putting Steve at his ease. Bob was returned to the main room in about twenty minutes; his nose and mouth were bleeding, and his eyes were puffed up.

"Okay, come on," Anderson said. He took Steve into the interrogation room, pulled out a nickel-plated .357 pistol, and held it against Steve's head. "Now I want the truth out of you," he said. "I don't believe your name is Steve Wilson, and I don't believe your friend's name is Bob Smith. I think you're really . . . ," and he threw out a name Steve didn't quite understand.

"I never heard of him," Steve said. "I'm Steve Wilson. Check all my papers, and you'll see I'm Steve Wilson."

"Bullshit," the narcotics cop said. "You just tell me the truth. Where's the cocaine?"

Steve tried to hold the laughter back, but he couldn't. The question was so far out of left field, coming from a man with whom he'd just had a pleasant conversation about North Carolina, that he broke down at the absurdity of it. "What's so funny, you son of a bitch?" Anderson shouted. He jammed the barrel of his pistol into the side of Steve's head, raising a large welt, and then grabbed him by the shirt front and began shaking him.

"You overeducated sons of bitches," he said, "you're not good for the United States or for anybody else. We're going to do something about you guys. You're going to fry. I'm going to see whether you're legitimate or not; and when I find out, I'm going to see that you fry."

He shoved Steve back into the other room, at pistol point, over to the prosecutor's desk. "Hold these two," he told him. The prosecutor shrugged. He had treated the DEA agents with great deference from the start, and now he agreed to the order from an American cop to throw two Americans back into the tank. The DEA agents left. The prosecutor told the prisoners, "You should have kept your mouths shut. Now you have to go back to the drunk tank."

They were in the tank for another couple of days and were then taken back to the prosecutor's office and given papers, written in Spanish, to be signed. Once their signatures were on the documents, they were told, freedom would be only a matter of time. Steve tried to read the papers. He understood no Spanish at all, but he could make out enough to realize that it was an admission he'd been transporting a few hundred kilos of cocaine.

"I'm not signing anything," Steve said. "That's a confession, and I didn't do anything. I'm not signing."

A couple of *Federales* led Steve and Bob to a building next door. There were about a dozen prisoners, including several other Americans, in the single, large room. A large bucket filled with soapy water stood on the floor in the center of the room. "The water treatment," one of the other Americans said. The Mexican prisoners were put through it first. One at a time, each of the prisoners had his hands tied behind his back and was forced to kneel in front of the bucket. A *Federale* shoved his head under until he couldn't hold his breath any longer, and he had to swallow the soapy muck. Then his head was pulled out by the hair, giving him a chance to gulp air, and it was shoved under again. This happened repeatedly, until the stomach bloated up as if he were pregnant. And now the prisoner was thrown to the floor and kicked in the stomach until he threw up the water.

> Steve was sure that he was going to die, but he felt he'd rather die trying to escape than being dumped in the desert.

After the first one was treated this way, most of the other prisoners agreed to sign confessions. Steve knew that there was no way he could resist—he'd cave in and sign the moment the *Federales* pulled him toward the bucket. But he was near the end of the line, and he waited and watched. They were through with all the Mexicans in about a half hour, and they started on the Americans. The first American they worked over was a man named Bradley Speare. (Prisoners who have recently written to Steve say that Speare is still locked up and is suffering from tuberculosis.) As the *Federales* began shoving Speare's head into the bucket, DEA agent Anderson walked in. It was as if someone had told him that they were working on the Americans now and he had to see it. He watched Speare break down and agree to confess and watched as the head of the second American, John Putman, was shoved in and held under. When Putman was permitted to come up for air, he saw Anderson for the first time. He began to scream at the DEA agent, cursing him, threatening him. Anderson smiled, walked over, and kicked Putman in the abdomen. Then he left.

The cops started on Bob Smith, but for some reason the torture session was called off just then, and they were taken back to the prosecutor's office, still insisting that they would not sign. Anderson was sitting there, and he said to the prosecutor, "I checked on this guy and his friend; they're nobody that can cause any trouble. I want you to nail these overeducated sons of bitches real good."

The next day, after witnessing the torture of other prisoners, Steve and Bob signed the confessions.

What was done to Steve Wilson and Bob Smith and scores of other Americans violates Mexican law, the Vienna Convention, and several United States-Mexico consular treaties. Contrary to international convention, the *Federales* as a matter of routine will not permit an American prisoner to call the nearest consulate for assistance until after he has signed a confession, when it is too late. And, as in Steve's case and dozens of others that have been documented, DEA agents encourage violations of the rights of Americans even when the agents aren't actively participating in those violations. It would be simple for a DEA agent to pick up the phone and alert the consulate that an American is being detained and may need help. But the agents are supercops, and they're not about to assist a prisoner when there is no higher authority to second-guess and criticize them later.

That higher authority would normally be the State Department, which by law is required to protect the rights of Americans through its embassies in the capital of each country and its consulates in the hinterlands. But for years, despite a lot of platitudes mouthed by State Department spokesmen in congressional testimony and in statements to journalists, State hasn't given a damn about Americans held in Mexico.

"Most of those Americans are involved in dope-trafficking charges," one State Department officer admitted to Bill Waters of the *Arizona Daily Star* during a not-for-attribution discussion. "Guilty or not guilty," State's spokesman went on, "they're mostly long-haired hippie types, and during recent administrations that kind of person is strictly low-priority. State's not about to be bothered with their civil rights."

Edith Wilkie, one of Representative Stark's aides who have been investigating Mexican justice, confirms that this attitude was common among State Department officials when Stark first began asking questions about California kids arrested in Mexico; most recently, under growing congressional pressure, the attitude is improving, Wilkie says.

State Department officers who speak frankly about the agency's attitude do so only after extracting promises that their names won't be revealed. And they have told Waters and other writers, including this one, that the DEA and the State Department have made it clear to Mexican police officials that the United States is willing to subsidize them to jail American citizens. That official license to Mexican cops—to hunt down and treat Americans any damn way they please—has grown so pervasive that even Americans involved in minor auto accidents are handled as if they were major criminals. David Julyan, former assistant to Stark, points out that some Americans in Mexican prisons are being held on nondrug charges, such as refusing to pay a hotel bill after an argument over inflated charges. And Sheldon B. Vance, State's coordinator on international narcotics problems, conceded that of 130 imprisoned Americans checked by State, only six had ever been involved in narcotics before their arrest on drug charges; obviously, they were not the major traffickers that the DEA claims it is putting out of business.

The drug cases have provoked the greatest abuse by Mexican and American officials. DEA agents actively help the *Federales* frame men like Steve Wilson, and, say Representative Stark and his investigators, State will not investigate when an American charges that he has been beaten into signing a confession in a language he doesn't understand. The two agencies are working hand in hand in Mexico; it isn't by accident that DEA headquarters in Mexico City is in the American Embassy building. And Stark has said: "While my office was cooperating fully by opening our files and sharing the information we had collected, the State Department was concentrating its efforts on whitewashing the issue. According to one of the State Department officials involved in the work, only 5 percent of their time was spent on substantive investigations into allegations—the balance on 'covering our tracks.' And that remark has been edited." Stark refuses to disclose the name of the State official who made that revealing confession, insisting he's not out to punish individuals in State but is more concerned about getting justice for the imprisoned Americans.

State officials, most notably Leonard F. Walentynowicz, head of the Bureau of Security and Consular Affairs, deny Stark's charges and insist that State is taking "appropriate measures to ensure that all Americans imprisoned abroad are protected from maltreatment." Indeed, in commenting on Stark's assertion that he has strong evidence in more than 100 cases that Americans were abused while under arrest and after imprisonment, Walentynowicz said in testimony before a congressional committee, "We find that too many times allegations of mistreatment later prove to be unsubstantiated and are motivated by the real desire to avoid the situation the person got himself into. It is a constant and recurring theme." And that, says Stark, is State's recurring theme: the complaining Americans are "felons," and you can't believe the word of a felon.

DEA officials are a bit more honest about their role in Mexico. They'll admit that a lot of those Americans who were actually caught smuggling and are now serving jail terms would never have been arrested in Mexico were it not for DEA pressure. These prisoners, most of them amateurs smuggling a pound or two of cocaine from South America to the United States, were arrested during stopovers at the international airport in Mexico City. They were charged with smuggling coke into Mexico, but in reality they were arrested because the DEA preferred to have them sweated out under Mexican laws.

"It would be just as easy for United States agents in South America to put the finger on them in the United States as it is in Mexico," an American narcotics official has said. But, added the official, Humberto E. Moreno, DEA's Mexican coordinator, the narcotics agency prefers to have them arrested in Mexico because Mexican laws are tougher. Moreno says:

"If we were to put a chart with our prosecution figures on it and the Mexican figures on it, it would show that the Mexicans do much better than our courts on convictions and penalties. Mexico has much stiffer narcotics laws and a much stiffer attitude toward enforcing them. The Mexicans are giving defendants six years in cases that we are losing in American courts."

> "Guilty or not, the long-haired hippie type is strictly low-priority," said a State Department official. "We're not bothered with their civil rights."

And Moreno brags that "we motivated" the arrests at the Mexico City airport—that the DEA got the Mexican government to intercept amateur smugglers before they could get to the United States. Stark and others who have compiled evidence that many Americans have been the victims of frameups charge that the DEA is using Mexican police and courts to act as front men in subverting the American Constitution.

Steve and Bob were moved to the San Luis Prison, a couple of blocks from the prosecutor's office, the day after confessing. Two weeks later they were told that a court of first inquiry had found them sufficiently guilty to stand trial and that their case was being sent to a higher court for the real trial. That might take a year. Steve was granted the right to make a phone call only after demanding for a month that he be permitted to notify his parents or his employer about the arrest. It took another couple of weeks after that for the American Consulate to contact Steve and the other American prisoners, long after they'd been convicted in the lower courts, of course. One day a guard rounded up Steve, Bob, and two other Americans imprisoned with them, Bradley Speare and Rex Heismer, and led them to an office to take a phone call from their government. At last, Steve thought, the embassy is going to get us out. He picked up the phone. Through the static he could hear a woman say that she was a consulate employee, but the connection was so bad that he couldn't get her name. Nor was she able to understand any of their names. After much shouting, she hung up.

Employees from the consulate later began visiting the prisoners. They said that they were from the consulate, but they usually refused to identify themselves by name. After a few visits the prisoners refused to have anything to do with consul employees, because they were, as Steve puts it, rude, depressing, and nasty. Their attitude was quite simple: "If you didn't want this to happen, you should never have come to Mexico; you got what you deserve." The American prisoners quickly understood what was happening—about once a month a consul employee, usually just a clerk coming into town to shop, would visit the prisoners so that he could make an official notation for embassy records that he had checked to see whether the inmates were being treated properly. Whenever a prisoner complained that he'd been beaten, or that he'd been sitting in prison for more than a year without a trial when Mexican law holds that this is illegal, the consulate's response was intimidating. "Well, we can file a complaint," was the standard line, "but it might get rough for you if you complain against the Mexicans."

Steve's boss had reached Sen. Sam Ervin, who called the State Department, demanding that it reveal what it was doing to protect Steve's rights and that it make certain that he was given a speedy trial; by then Steve had been held for about four months. Under such senatorial pressure, a man who identified himself as being with the American Consulate visited Steve. "You lousy troublemaker," he began. He grabbed Steve's shirt and shouted, "Look, you, don't you make waves. If you make us look bad, there's no telling what will happen to you." Steve does not recall the man's name.

Soon after Steve's first contact with consulate employees, the lawyer-leeches descended on his parents back home in New Jersey. They had somehow been tipped off about Steve's imprisonment—tipped off by consulate officials, Steve believes—and there is evidence from other cases to support that conclusion. Steve's mother, Mrs. Harris Wilson, says she received "a lot of collect phone calls in the middle of the night from Mexican lawyers who said that

CONTINUED ON PAGE 116

NIGHTMARE

CONTINUED FROM PAGE 90

they had a message from Steve: 'Mom, help me. Dad, help me. Dear God, please help me.' Then they demanded thousands of dollars, or else we'd never see Steve alive again."

Despite the payment of thousands of dollars to several lawyers, "None of them did anything to help Steve," Mrs. Wilson said. "One lawyer told us he might have to charge us $50,000; that's what it would take to get Steve out. If not, he would be tortured; and if he lived, he'd become a drug addict in prison. Then he dropped his price to $40,000. We told him we didn't have that kind of money. Many months later a lawyer in New Jersey who represented us got a call from the first lawyer, who said, 'I have a doctor friend whose daughter was just arrested in Mexico. Do you know how I can help her?' And he had accepted our $500 to help get Steve out."

The Wilsons and their relatives were fleeced of $11,000 before Steve could convince them that the Mexican lawyers were simply extortionists. They spent another $4,000 for getting food and clothing to Steve and for paying for his escape car.

The State Department maintains that it helps American prisoners by giving each of them a list of reputable lawyers compiled with the aid of the Mexican Bar Association. One of the lawyers on that list took $2,000 from Steve's father and never contacted him again.

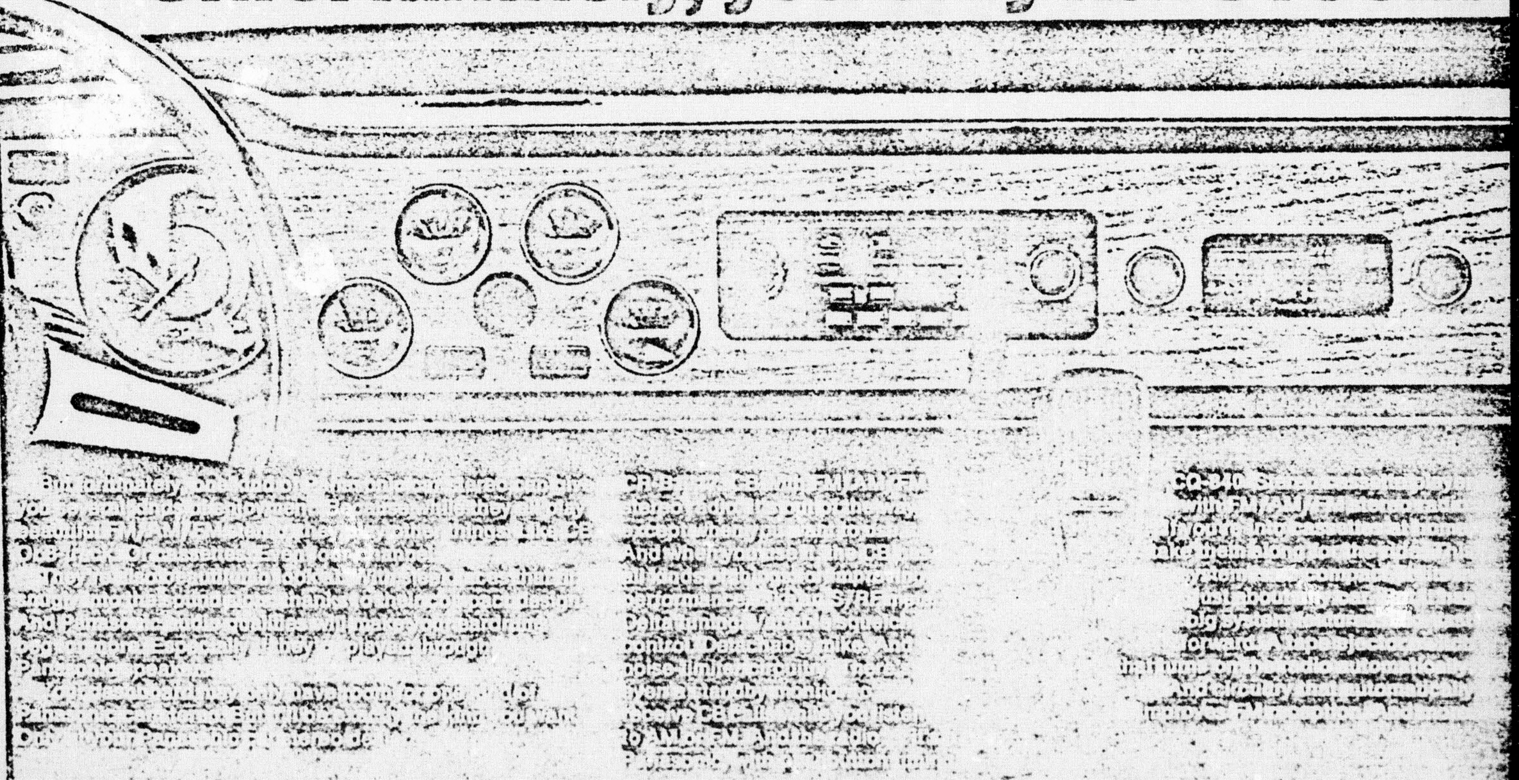
Steve lost about seventy pounds during his few months in San Luis Prison because the Mexicans wouldn't feed American prisoners and because most of the money sent him by his parents was stolen. When he and Bob were told that they were being transferred to Nogales Prison, Steve felt that the transfer could only be an improvement. He realized that he was wrong the moment he arrived. The old prison, which was to be his home for several months, appeared like something out of an Anthony Quinn film. More than 600 inmates were packed into a boxlike structure about twenty yards wide and forty yards long. A tier of some thirty cells ran around the top of the prison, overlooking the dirt-floored courtyard. Half the Mexican prisoners were crammed into those cells. The others, and all the Americans, slept out in the yard, in the rain and snow and the 100-degree desert heat.

During many hours of talking about his experiences with an interviewer, Steve lost his composure only once. Describing conditions at Nogales, his voice wavered and then cracked, and he said: "If all my nightmares were ever thrown into one place, it was there. . . . I've never seen any place . . . so much like hell. . . ."

It was the heroin, primarily, that made the old Nogales so closely resemble hell. In Mexico prison directors are not given adequate federal funds for operating their institutions. Beyond the cost of food (a single plate of beans, weak coffee, and bread) and the guards' salaries, every item has to be purchased from the funds of the prisoners. It cost Steve more to live in prison than on the outside. But the main source of prison funds is the sale of drugs. A kilo of marijuana could be bought for only forty dollars; heroin was a dollar a shot, cheaper than on the outside. The director of the prison was an addict, and he and other prison officials pushed heroin; several Americans who had never used heroin before became addicted in Nogales.

The Americans traveled in packs, for protection against Mexican addicts. One day a young American was thrown into the prison. He was a small kid about sixteen or seventeen, too young even to grow a mustache. He said that his name was Daniel and that he was from Phoenix. He'd been an addict and had kicked the habit in a Phoenix drug program and was now working as a counselor there. He'd been arrested for possession of a single joint. The American prisoners warned him that Nogales was made deliberately frustrating, so that the prisoners would turn to heroin for relief, and they warned him against returning to heroin because if he ever lost contact with reality he would be robbed

Unfortunately, you only have room



[illegible]

and probably raped by the Mexican prisoners.

They watched over Daniel for a few days, trying to protect him. But one afternoon he wandered off, and Steve and the others didn't realize that he was gone until they heard him screaming from the upper level, from one of the Mexican cells. The Americans were helpless; if they had tried to get up there, they would have been killed. They shouted for the guards. By the time Daniel was pulled out, he was dead from dozens of stab wounds; he had fought off rape attempts, and the prisoners had killed him. The guards took his body away. They probably buried it in the desert, other prisoners told Steve, and Daniel's parents will never know what happened to him because Mexican officials don't bother reporting the death of an American whose presence in prison hasn't yet been made known to the American Consulate. It was as if Daniel had never existed.

Shortly before Christmas, about six months after Steve and Bob were arrested, they were transferred with most of the other inmates to a new section at Nogales, a maximum-security prison the *Federales* bragged was absolutely escape-proof. Through all the months of his detention, Steve had discounted warnings and continued to write letters of protest to American politicians and the media; he had even written a long, rambling letter to the State Department detailing everything that had been done to him by both Mexican officials and American agents. A week after Steve had sent that letter, three Americans came to visit him in the new prison. They didn't identify themselves. They needed shaves, and they looked as if they'd been hunting in the hills for a week.

"We read your letter to the State Department," one of them said.

"Great, great," Steve replied. "Maybe now I'll get some action."

One of the men pinned Steve's arms behind his back. The other two punched him, in the face, the chest, the abdomen, taking turns beating the hell out of him. They dumped him on the floor and then left. Steve didn't write protesting letters for a long time after.

But he was constantly trying to escape and was always caught before he could put a plan into operation. After a while he was blamed for any escape attempt by an American; and when one inmate almost made it past the electrified fence that surrounds the entire prison, Steve was put into solitary confinement for being an accomplice. He was in the hole for almost three months.

After solitary Steve decided to change his tactics. Protest usually resulted in beatings from Americans or in punishment from prison officials. It was futile, he realized; perhaps he'd get better results by proving to the Mexicans that he was worthy of release—that he had been rehabilitated. He began to behave himself, waiting for an opportunity to demonstrate that he was trustworthy.

That opportunity came by luck. One of the prison officials, an army colonel, had discovered that some Americans were playing two board games, Stalingrad and Blitzkreig. He excitedly confiscated them; this was what army men should be doing, defending Stalingrad and beating back Hitler's blitz. Unfortunately, the prison official didn't know how to play the games. Another American prisoner learned that Steve had played the games from childhood, and he suggested that it would be to Steve's benefit to teach the prison officials. So Steve became their instructor and the arbiter of the rules. A couple of days a week, Steve would be called into the prison director's office to watch him and the colonel play and to act as umpire. From January to March 1974, he slowly built a feeling of trust among prison officials, and the guards, who knew of it, of course, began to treat him with some respect. Steve was, as he puts it, trying to convince everyone with power that he was a good person.

It didn't help him much with the courts or with official American power. Despite a promise to release Steve that the judge hearing his case had given to a member of the prosecutor's staff, he and Bob were sentenced to five and a half years in prison. When the secretary of the court told Steve that he'd been convicted and given a long

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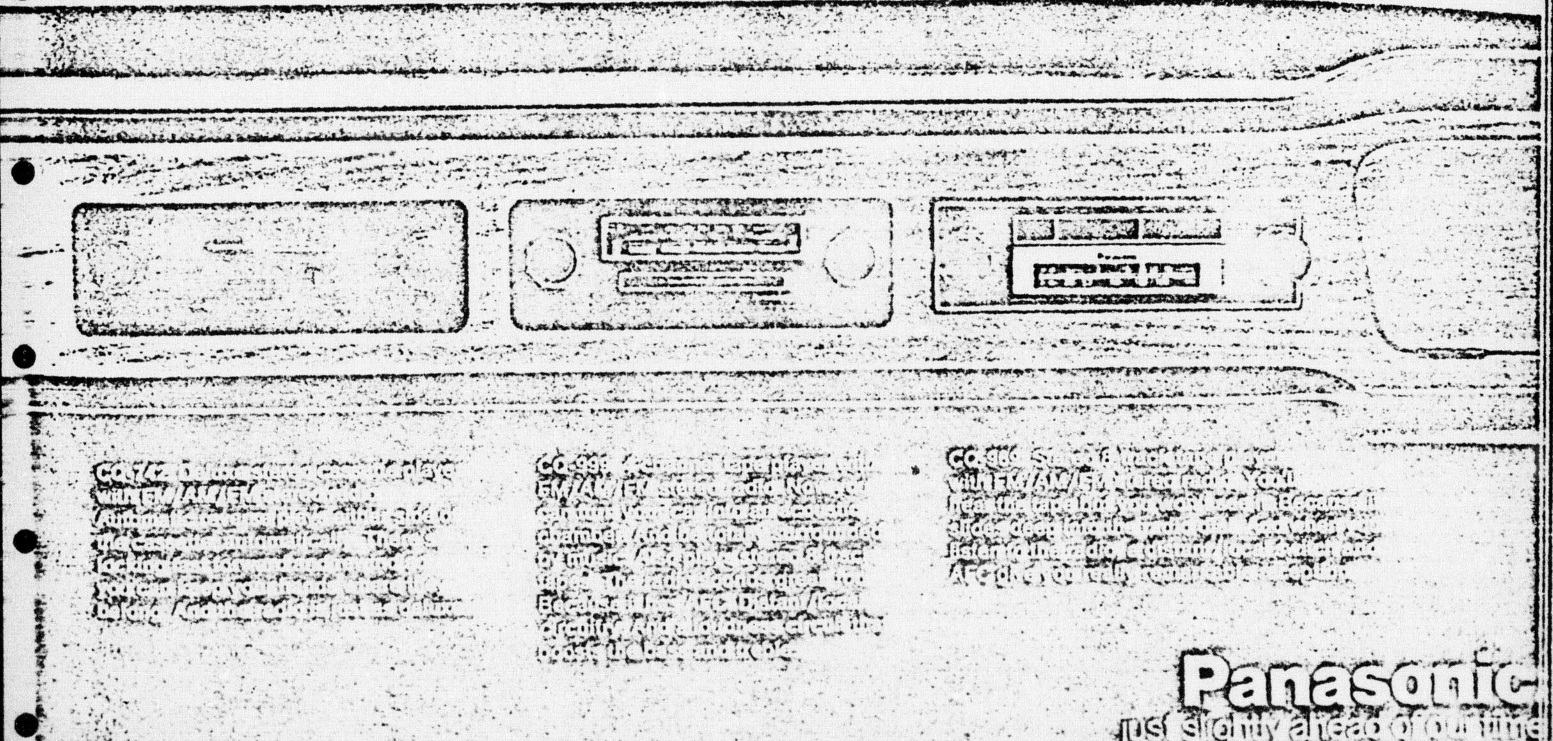

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term. Steve asked what had happened to the promise. The secretary said three Americans spoke to the judge about his case, and the judge decided that Steve and Bob were hardened criminals who must be kept in prison. The secretary refused to describe the three Americans and refused to say anything further. They could only have been acting in an official capacity, of course; Steve believes that they were from the American consulate.

They appealed their sentences. In a short time Steve was told by a prison official that both appeals had been denied and that Steve's sentence had actually been extended to thirty years. Steve stared at the man, unable to believe the words. Finally, he asked, "Why?"

"Because you know too much," the official said.

But Steve's problems were just beginning. In October 1974 the sergeant of the guards, a gentle, elderly man named Don Orelio, warned Steve, "Soon they're going to have to take you away." Steve asked him to explain, and Don Orelio said, "They've put you in for transfer, and they will dump you in the desert." Orelio cried and gave Steve a silver medallion for good luck. Soon the word spread that Steve was to be killed, and all the Indians in the prison started giving him silver jewelry. And Steve began planning his escape.

The only way out of the prison, he decided, was in a car that would be brought in to him. There was a body-and-fender shop in the prison, another of the director's fund-raising enterprises. Using free convict labor, the director was able to undercut outside repair shops, and his garage was always filled with damaged cars that had been brought in for repairs from all over the state. The cars were carefully searched on the way in and on the way out, but Steve knew how to get his car past inspection. And he knew several people who would help him do it.

One of them was Lee Hare, an American prisoner who owed Steve a large favor. Lee had been put in solitary and was kept alive only because Steve sneaked food in to him. Although Lee had actually been caught with thirty pounds of marijuana, he had paid enough bribe money so that he'd be sentenced to a short term with an optional fine. He had paid the fine and was scheduled to be released in mid-November. Steve promised to pay Lee several thousand dollars to help in the escape.

"I want you to get hold of an old car," Steve said. "Not a Ford or Chevy, but some car the Mexicans wouldn't be familiar with. It has to be big enough to make a compartment for me to squeeze into. Maybe the guts can be taken out for a compartment, or maybe it can be put behind a seat; I'll leave that to you. Get a sheet-metal worker to work it out."

Hare agreed, but he would not bring the car into Mexico, because he didn't ever want to set foot inside the country again. Instead he would send it across the border with his girl friend, who had been arrested with Lee and was also scheduled for release. "But you'll have to find someone else to drive it into the prison shop," Lee said.

Steve was also owed a favor by a Mexican prisoner whom he had helped to kick the drug habit, and he told the Mexican about his need for someone on the outside to bring in his escape car. The prisoner was frequently visited by a lovely teenage girl he called his cousin. She [illegible] ave, and she agreed to bring the car in for repairs when it arrived in Nogales.

And that evening in December, after shaking off his fears that he would be killed in that Volvo wagon that came through the gates, Steve slipped down to the body shop with Bob. "You're going to die," Bob kept saying, "but if you really want to die, I'll help you because I know what you're feeling." Steve still felt he was going to die, but he'd rather die trying to escape than being dumped in the desert.

They spent more than three hours searching for the hidden compartment.

Steve was certain that the guards knew he was hidden in the car. At any moment, he would be pulled out and summarily executed.

Lee had had the old tirewell enlarged somewhat, so that it looked like a gas tank from underneath the car. The original gas tank had been ripped out to make room for the compartment, and a small one with just enough fuel for getting across the border and back had been hidden in the chassis. On the inside of the wagon, covering the entire floor, Lee had screwed wooden strips so that it looked like the deck of a boat. The hatch to the compartment could be raised only by removing the screws.

It was, Steve says, the smallest space he'd ever seen. He was down to 135 pounds from his original 200; yet he couldn't squeeze into it without the help of Bob, who shoved him inside like a sausage. When he was squashed into position, Steve bit off one of seven Mandrex capsules he had taped to his arm, and he began to grow groggy as Bob screwed the hatch closed. Each time Steve woke up during the night, he bit off another Mandrex and went out again until he realized it was morning; he could see a stream of light through one of the two airholes that had been drilled into the compartment. And after a time he realized that something had gone wrong. The fenders had been banged out and had been painted the previous afternoon, before Steve got into the car, but now the workers were painting it again and the fumes were suffocating. The sun started beating on the car—it was often 120 degrees in the sun—and Steve's skin started to blister. He tried not to take any more Mandrex because he didn't want to waste it—he was certain the prison officials knew that he was trying to escape and were letting him roast to death. He started bleeding at the nose. His legs, the skin blistering and the muscles cramped from the contorted position he was in, felt as if they were being burned with a blowtorch. He passed out.

At night, when he awoke, he took more Mandrex. Unknown to him while he'd been unconscious, the car had been moved to another section of the prison, which Bob couldn't reach; so it wasn't possible to get him out.

He was in the car for three days. The Mandrex had run out. He was bleeding and vomiting, and he began to scream at the pain and futility of it all and then put his hand over his mouth and bit a wound in it to stop his screaming. He was certain that the guards knew he was hidden in the Volvo and that they were waiting for him to die. He heard guards talking about the car several times. Once it was moved to another part of the prison, and he knew that at any moment he would be pulled out and, if he was still alive, summarily executed. Then he heard a gate open, and the car was driven through, and then another gate open. And he knew that he was at the front gate, a few feet away from freedom.

Then he heard the guards begin to tear the car apart, pulling out the seats, lifting the hood and trunk lid, crawling around inside searching for him. It was clear that he had been reported missing and that they were trying to find him in the Volvo. Steve lay there, praying, "Please, please, please, God . . ." The car began to move again. Steve heard still another gate open and then close behind him, and he knew that he was out of the prison. And then he heard the voice of the young girl who had promised to drive him away from Nogales. A guard was arguing with her, giving her a difficult time about something. The car finally started up. The plan had been that the girl would release Steve when she was clear of the prison, but she kept driving and said nothing. Steve was certain a guard was with her, taking her somewhere for a more thorough search. And he knew that he had to break out and try to overpower the guard.

He screamed and rose up with such sudden force that he tore the hatch loose, tore the screws from the wood, and lifted himself part of the way out of the compartment. But his legs refused to move, he couldn't stand on them, and the heavy hatch cover fell back on him, covering his shoulders so that only his neck and head were sticking out. He was facing toward the rear, watching the trees flash by, and didn't have enough strength to raise the hatch cover so that he could see who was driving. He began to cry, actually sob, and he was mumbling, "Oh, no, I came so close."

The driver slammed on the brakes. And Steve saw the outline of a person at the back of the wagon but was unable to recognize features because his mind had practically gone blank. He heard someone saying in Spanish, "You live, you live." And he recognized the girl's voice.

Later he walked across the border, because it would have been too dangerous to have tried going through in the Volvo. The moment he was certain that he was in the United States, he spent the few dollars he had in his pocket on a cheap bottle of wine and sat on the curb, drinking it. Then he went back to the border fence and screamed, "You motherfuckers. You can't get me, you motherfuckers."

A couple of days later, the day before Christmas, Steve returned to the home where he'd grown up in New Jersey.

John Atkisson, a lawyer who was then counsel to Rep. Otis Pike's special committee investigating the CIA and DEA, heard about Steve's experiences and called him to Washington a few months after Steve's escape. Steve was put through two exhaustive interviews. Atkisson then called DEA agent Anderson, who had since been shot in an ambush in Mexico and had been transferred to Texas. He questioned the agent about Steve's charges. Anderson denied ever having met Steve Wilson. Slowly, Atkisson led the agent into a trap: do you have a gun? Do you ever draw it?

Anderson said that he indeed had a gun, a nickel-plated .357. He never drew it unless he was forced to. Yes, the gun had scratches above the handle, not notches.

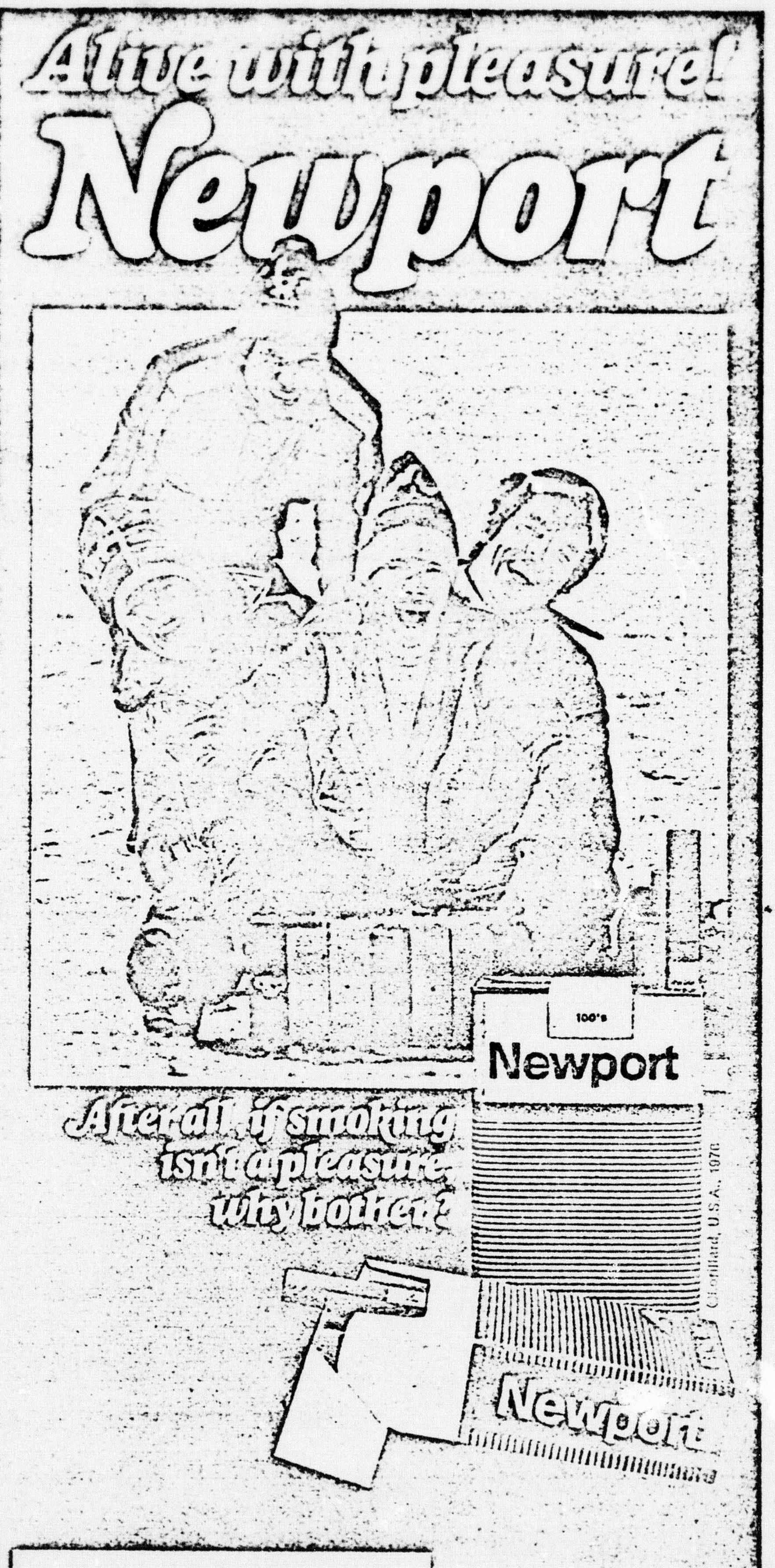
How, if you never met Steve, could he have described your gun so accurately?

After parrying a bit, Anderson said that he was a very well known agent and that any one of dozens of prisoners in Nogales could have described the weapon to Steve Wilson. And Atkisson felt that there was enough conflict between the two statements that a hearing should be called, with both Steve and the DEA agent testifying under oath. But because of complications, the hearings were never held.

"I believed Steve Wilson," Atkisson says today. "I wanted to go down to Mexico and explore the whole problem further, but it was beyond the scope of our investigation.

"I'll tell you something, though," he adds. "After hearing Steve's story and learning about everything that's still happening to Americans in Mexico, I wouldn't go down there unless I had a couple of congressmen with me, and full authority from the Congress to conduct an investigation. Any other way just wouldn't be safe."

Last June, Congress amended the International Security Assistance Act to require the president to communicate directly with the Mexican government about American prisoners. Mexico has proposed an exchange of American prisoners for Mexican prisoners in United States jails. Nothing has happened yet.—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Sir:-Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

LENEFSKY, GALLINA, MASS & HOFFMAN

Attorneys for

Office and Post Office Address

30 BROAD STREET

NEW YORK, N. Y. 10004

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

LENEFSKY, GALLINA, MASS & HOFFMAN

Attorneys for

Office and Post Office Address

30 BROAD STREET

NEW YORK, N. Y. 10004

To

Attorney(s) for

Index No. Year 19

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
EAS

UNITED STATES OF AMERICA

-V-

FRANCOIS CHIAPPE,

Defendant.

NOTICE OF MOTION; AFFIDAVIT AND MEMORANDUM

6-142 C.

LENEFSKY, GALLINA, MASS & HOFFMAN

Attorneys for Chiappe

Office and Post Office Address, Telephone

30 BROAD STREET

NEW YORK, N. Y. 10004

(212) 944-1550

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

UNITED STAT[illegible]STRICT COURT
EASTERN DIST[illegible] OF NEW YORK
--------------------------------------x

UNITED STATES OF AMERICA
-v-
FRANCOIS CHIAPPE
Defendant
--------------------------------------x

Lnd. No. 73 Cr ~~235~~ 164

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ JAN 24 1977 ★
TIME A.M.
P.M.

SUPPLEMENTARY MEMORANDUM OF LAW

Defendant respectfully prays that this Court consider the following materials in connection with defendant''s motion pursuant to U S v. Toscanino, 500 F.2d 267 (2d Cir. 1974) :

1) Title 18 U S C. Section 2, which reads as follows:

> (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
>
> (b) Whoever willfully causes an act to be done which is directly performed by him or another would be an offense against the United States, is punishable as a principal.

2) American Law Institute, Restatement of Law Second, Foreign Relations Law of the United States, Secs. 178-182 (1965).

Chapter 2: INADEQUATE ADMINISTRATION OF LAW

Topic 1. Denial of Procedural Justice

§ 178. Denial of Procedural Justice Defined

As used in the Restatement of this subject, "denial of procedural justice" means conduct, attributable to a state and causing injury to an alien, that departs from the international standard of justice specified in § 165 with respect to the procedure followed in enforcement of the state's law as it effects the alien in criminal, civil or administrative proceedings, including the determination of his rights against, or obligations to, other persons

§ 179. Arrest and Detention

***

(3) Mistreatment of an alien in the course of arrest or during detention is a denial of procedural justice.

f. mistreatment. Examples of mistreatment within the meaning of Subsection (3) are: unnecessary injury during arrest, the compelling of unnecessary physical exertion harmful to health, detention in unsanitary conditions, and torture of any kind, whether physical or mental. Restrictive measures that have no purpose of preventing escape, protecting the safety or security of the arresting officials, or maintaining reasonable rules of prison discipline, but are in the nature of punishment for conduct occuring prior to arrest, are wrongful under international law, since punishment is warranted only after conviction.

It is defendant's position that even if it is impossible to prove that American Agents were directly responsible for his mistreatment, They should be held to be responsible under the provisions of 18U.S.C. §2. The testimony at the hearing, especially that of AUSA Bernard Fried and the DEA agents, amply supports this view.

The ALI Restatement is relevant in light of the testimony of DEA agents Polumbbo and Corcoran, who both testified that they receiced Mr. Chiappe blindfolded and Straight-jacketed, and that other than the specific orders they had from superiors, there was no need whatsoever to keep him in that state until 15-20 minutes into the return flight to New York/.

Dated: New York, N.Y.
January 24,1977

Respectfully submitted,

JURIS G. CEDERBAUMS
attorney for defendant

30 Broad Street
New York, N.Y. 10004
(212) 425-1060

cc: To Peter Schlam, AUSA

NOTICE OF ENTRY

Sir,—Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

LENEFSKY, GALLINA, MASS & HOFFMAN

Attorneys for

Office and Post Office Address
30 BROAD STREET
NEW YORK, N. Y. 10004

To

Attorney(s) for

NOTICE OF SETTLEMENT

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at M.

Dated,

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Attorneys for

Office and Post Office Address
30 BROAD STREET
NEW YORK, N. Y. 10004

To

Attorney(s) for

Index No. Year 19

73 Cr. 239

UNITED STATES OF AMERICA

-against-

FRANCOIS CHIAPPE

Defendant

Supplementary

Memorandum of Law

JURIS G. CEDERBAUMS
LENEFSKY, GALLINA, MASS & HOFFMAN

Attorneys for

Office and Post Office Address, Telephone
30 BROAD STREET
NEW YORK, N. Y. 10004
(212) 425-1060

To

Attorney(s) for

Service of a copy of the within
is hereby admitted.

Dated,

Attorney(s) for

U. S. AT
JAN 24 10 55 AM '77
EAST. DIST. N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----------------------------------x

UNITED STATES OF AMERICA, :

-against- :

FRANCOIS CHIAPPE, :

Defendant. :

-----------------------------------x

United St [illegible] thouse
Brooklyn,
January 7
10:00 o'

Before:

HONORABLE JACOB MISHLER, Chief Ju

Howard A. Goodman,
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: PETER SCHLAM, ESQ.
Assistant U.S. Attorney

GINO GALLINA, ESQ.
Attorney for Defendant Chiappe

THE CLERK: Criminal motion. United States of America v. Francois Chiappe.

THE COURT: This is a hearing on the jurisdictional claim made by Mr. Chiappe.

MR. GALLINA: Your Honor, I have just a few matters before we put Mr. Chiappe on the stand as a witness. I have two subpoenas that I want to bring to your Honor's attention and have your Honor preliminarily pass upon them. I thought this might be the best way of doing this, in view of the facts.

These are subpoenas for the authors of the articles in Newsweek Magazine, and that is Pete Axtheln and Anthony Marrow, both who made the statements which are attached to the notice of motion and memorandum.

The point is, though, that they had spoken to various individuals in the State Department and the DEA who told them about the arrangements that had been made by South American countries, such as Argentina, which they, that they would give various individuals up to the United States, that the United States wanted in exchange for promises given to those countries.

THE COURT: Do you find any reason to have that testimony going, coming into this case, Mr. Schlam?

MR. SCHLAM: I think it is irrelevant.

MR. GALLINA: I assume, without any concessions being made by the Government, that our country said to Argentina, if you don't turn these people over we'll cut off your foreign aid.

THE COURT: That is the most unlikely thing that I ever heard of. How does that help you?

MR. GALLINA: Well, your Honor, if we use whatever tactics the United States used --

THE COURT: You are saying that they would cut off foreign aid if they didn't turn over Mr. Chiappe?

MR. GALLINA: There were arrangements made and what pressure, what amount of pressure or what exact promises or arrangements were made I am not privy to. I know that there were arrangements as stated by these reporters.

THE COURT: What arrangements do you say were made?

MR. GALLINA: If I may, your Honor, I would like to refer to the article right now. They speak about here, on page 57, at the end of page 56 and going on to page 57 from the Newsweek article, they speak about extradition treaties that don't satisfy the needs of the DEA. They spoke about it, just to give a quick example, in order to grab foreign drug conspirators, certain procedures were followed in turning them over to our government. They speak about pressure.

Now pressure can take several forms and they give examples of the various forms and they go back to various cases. They give examples in other cases, such as, and to name some, some people at the State Department said Nelson Gross in his article on page 57, said, "The State Department sent Nelson Gross, whose job was to coordinate the international narcotics sweep, to change some minds. As U.S. officials properly tell the story, Gross told Paraguayan President Alfredo Stroessner, the U.S. was prepared to cut off 11 million in annual aid and vote against loans to Paraguay by international agencies."

THE COURT: What do they have, if anything, to do with the kidnapping, as you claim, of Mr. Chiappe?

MR. GALLINA: Because they are pointing out the kidnapping of Mr. Chiappe occurred in a very similar manner.

If I may read from the article, "The most recent trophies of de facto extradition are the Frenchman Chiappe, the Italian Miguel Russo, and the

Chilean Yolanda Sarmiento, who were resident aliens of Argentina, and the alleged French master dealer, Dominique Orsini who was abducted from Senegal."

THE COURT: In your brief, you cite the United States v. Orsini and Judge Bramwell had a hearing on it.

MR. GALLINA: Judge Bramwell ruled that it was not relevant because in the article, the reporters were not concerned with the abduction. The abduction of Mr. Orsini.

THE COURT: Do you think he was right?

MR. GALLINA: No, your Honor.

THE COURT: Well, you cited it in your brief --

MR. GALLINA: Not for that proposition.

THE COURT: Did you read your brief?

MR. GALLINA: Yes, your Honor.

THE COURT: What did you cite it for? What did you cite the United States v. Orsini for?

MR. GALLINA: May I, your Honor, I just don't understand what your Honor is talking of?

THE COURT: What proposition did you cite in the United States v. Orsini? Do you recall without reading the brief?

It is the proposition that a hearing should be granted here because Judge Bramwell granted a hearing?

MR. GALLINA: Yes, your Honor.

THE COURT: You want these reporters to come in and prove what?

MR. GALLINA: I want the reporters to reveal to the Court who it was that they spoke to in the State Department, who they spoke to in the DEA and who pointed out these arrangements?

THE COURT: What arrangements?

MR. GALLINA: That this is the arrangements which were made to obtain various individuals, to obtain them from South American countries, including my client, in this illegal manner.

THE COURT: What illegal manner?

MR. GALLINA: In kidnapping and in violation of the laws of those individual countries.

THE COURT: You say that there was a deal between two South American countries where they would give up these men to the United States, and for that the United States would continue its foreign aid. If so, you are not complaining the United States kidnapped these men; under that theory you are saying that what our Government did was put pressure on

South American countries to expel various narcotics dealers and that there is no kidnapping at all.

MR. GALLINA: That's part of the argument, your Honor.

THE COURT: What do you say the deal was -- that the Argentine police should give up these people to get our foreign aid?

MR. GALLINA: Now, I don't know how far they would go, when they go -- when they went down, that the Americans would be able to participate, that the Argentine police would strictly act as an agent for them and they could in a sense be employees or agents, or interested contractors, or whatever phraseology you want to use once given the promise of extradition and bargain.

THE COURT: I have no idea what a bargain is. I have no idea what the theory is when you interject that there is a deal between two countries for your client and that deal was that they are to be expelled. What you are saying, in effect, is that the kidnapping is outside of this particular jurisdiction.

(continued next page)

MR. GALLINA: What I am simply saying is that what happened is that the laws of this country did not permit that conduct. Neither the law of extradition nor the law of expulsion, nor the expulsion provides for a period of time for an appeal and provides for a choice of a country for the expelled person. There is no such thing that occurred in this case. The laws were violated of Argentina and the expulsion is fraudulent on its face.

THE COURT: May I have the expulsion order, please? Do you have it, Mr. Schlam?

MR. SCHLAM: My assistant is going to get it now.

MR. GALLINA: Now, the facts alone, on its face, is that every person in Argentina is specifically identified by number. The identification card for Mr. Orsini and Mr. Chiappe were entered into evidence during the trial, specifically it lays out the date and the number, and the number is the important identifying thing, identifying the person. They had a different number and it does identify another man, not this man.

THE COURT: I tell you, this is not working out. I hope your second point is stronger.

MR. GALLINA: When the attorneys for

Mr. Chiappe attempted to check, to determine in Argentina administratively, if there was an expulsion, the Argentinians are known to say we never expelled Mr. Chiappe and they have said it in court, in Argentina.

THE COURT: Let's come back to the subpoena. You want the newspaper writers to reveal with whom they speak; is that what you are asking me?

MR. GALLINA: That is correct. So we can further discover what the limits, what were the agreements made as to Mr. Chiappe. I quoted from Nelson Gross in his article where a case is made in a deal in Paraguay. I attempted to communicate with them and they would not communicate with us. They took steps to avoid service of the process.

THE COURT: Mark the subpoenas for identification and I'll consider it. You haven't convinced me that the information that they have is material and I will try to convince myself after thinking about it.

MR. GALLINA: The fact that Mr. Chiappe is supposedly expelled under the laws of Argentina, he is allowed to have an appeal, allowed to pick the country which he wants to be expelled to and presumably, that is the way Mr. Orsini and others opt to come to the United States. The facts are this: In his physical condition he was, the circumstances of that show, if you tie it together with the presence of American planes waiting there, with about twenty-five or twenty American agents on board, it shows compliance in the kidnapping, and that is in violation of Argentine law. Cooperation is participation as it deals in violation of conduct.

We will offer evidence through Mr. Chiappe that strangers on the street kidnapped him.

THE COURT: I would like to hear Mr. Chiappe testify as to what it is.

MR. GALLINA: He is going to do that.

THE COURT: I have listened to part of Mr. Chiappe's testimony concerning two English-speaking individuals who were there.

MR. SCHLAM: Your Honor, this is the expulsion order for Mr. Chiappe.

THE COURT: Mark it.

THE CLERK: So marked as Government's Exhibit 1 for identification. Also two subpoenas marked as Defendant's Exhibits A and B for identification.

MR. GALLINA: You see, your Honor, in that article, your Honor will notice he speaks of how members of the Justice Department, even among officials assisted in that method. It is also not uncommon in kidnapping that they go on to statements --

THE COURT: The Clerk has issued the subpoena. What problem do you have with me?

MR. GALLINA: I have none. I am sorry, your Honor.

THE COURT: You can serve them and bring them in. At this point, it is quite useless. Make sure you pay them subpoena fees and travel expenses.

MR. GALLINA: I would request, your Honor, in this discovery, if there are any documents in the confines of either the DEA or the Justice Department or State Department or any other agency involved, or federal agency which would show a bargain struck or an agreement, that the Plaintiff presented in a summary proceeding, to determine the jurisdiction --

THE COURT: You are not going to make and get granted a general request.

MR. GALLINA: It is just a specific of the procedure with the case.

THE COURT: Let's see what you have before you ask for that.

You think there are secret documents? Where are we supposed to find these documents?

MR. GALLINA: I don't think that they are secret documents. I think that they are secret agreements, and if there are agreements --

THE COURT: Should I direct the Government to reveal secret arrangements? I still believe in executive privilege.

MR. GALLINA: You may at this level, have agreement concerning this expulsion that are public documents.

THE COURT: You are assuming that there is an agreement and you want me to answer that question?

MR. GALLINA: Well, your Honor, the evidence is sufficient to presume that there is such agreements.

THE COURT: That is for me to determine.

MR. GALLINA: May I have one moment to speak to my client?

MR. SCHLAM : Mr. Fried is expected to be a witness for the Government in this hearing and I would request permission for him to be able to stay out of the courtroom during the hearing. I don't think that it will be prejudicial to the defendant, though.

THE COURT: I don't think that I will even pass on that unless there is a motion to exclude all witnesses.

We'll take a break now so I can take care of another matter.

* * *

FRANCOIS CHIAPPE, called as a witness having been duly sworn by the Clerk of the Court through Libya Clancy, Official Spanish Interpreter, testified as follows:

DIRECT EXAMINATION

BY MR. GALLINA:

Q Mr. Chiappe, do you recall the day you were arrested in Argentina in connection with this case in May of 1976?

A Yes.

Q Could you tell us where it was you were arrested and approximately what time of day?

A I was coming out of my house. I was with my wife. When all of a sudden, three cars stopped me and from there a whole lot of people came out and they approached me and they told me come down and I said to him, to them who are you?

Q Now, could you tell us what time of the day was this?

A It was about ten to three.

Q In the afternoon?

A Yes, in the afternoon.

Q Do you remember what date, day of the month it was?

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A I believe it was the 21st of the month.

Q That is the 21st of May, 1976; is that correct?

A Yes.

Q You say you were leaving your house, were you walking or were you riding in an automobile?

A No, I had just taken my daughter to school. I came back to the house to pick up my wife and we went into the car and we were in the car when this took place.

Q How far was the car from your home?

A When they took me?

Q When they first stopped you in your automobile?

A I was about a kilometer and a half away, approximately.

Q In what town were you driving at that time?

A Lafalda.

Q In what street?

A On the street 9 of Julio, where my store is located.

Q And, who was driving the car, you or your wife?

A Myself.

Q And, were the windows rolled up or were the windows down in your car?

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A My, mine was open.

Q Now, tell us how they stopped you?

A I tell you they cornered me and they told me to get out. Unfortunately, I said, "Who are you?" At that point they started coming from every side and they even hit my wife.

Q What caused your car to stop?

A They blocked the way.

Q Do you mean that they put cars in front of your car?

A One in front, one on the side and one in the back.

Q So, there were three automobiles that stopped you?

A Yes.

Q Now, as you say, they started hitting you, is that what you are testifying to?

A Yes.

Q How did they hit you and who hit you?

A It was men, I don't know who they were. They started to hit me with revolvers, with their machine guns. I was in the car and they hit me with a gun here and in order to get me out of the car they put a cord around me.

Q Where did they put the cord around you?

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A I don't know what you mean? The rope was around here (indicating.)

THE COURT: Your neck, you are pointing to your neck?

THE WITNESS: Yes.

BY MR. GALLINA:

Q What were you doing, what were you holding on to if anything in the car?

A I was holding on to the wheel.

Q How many times would you say that you were hit while you were inside the car?

A I couldn't count them. They even hit my wife because my wife kept saying, "Leave him alone. He's a sick man."

Q Did they hit you once or more than once, how many times?

A Several times.

Q And, with what instruments did they hit you?

A Machine gun, revolver.

Q And, what damage did it cause to you if any?

A At that point, you don't know where the blows are coming from. You can't count for the damage.

Q Well, afterwards, did you examine your body?

A Afterwards?

Q Yes.

A I wasn't the one to examine it. I just felt it.

Q What happened to you, what was the result of the beating?

A I don't know, I didn't know -- I wasn't a fugitive in Argentina.

Q Mr. Chiappe, what injuries did you suffer from them hitting you with these weapons on your head and on your face as you describe, what injuries were there on your body?

A My head was split open -- no more teeth (indicating) and I was black and blue all over my body. And, after that they tied me here and here.

Q You are indicating both wrists?

A Yes. The two wrists and even at present there are evenings when everything is numb and that's absolutely the truth. Everything is numb.

Q You are indicating your left and right arm?

A Here, a little bit less but everyday my feet swell.

Q You mean from the injuries?

A Yes.

Q Did they only hit you in your head or did they hit you in all parts of your body with these weapons?

A Everywhere.

Q Now, when you were pulled out of the car, did anything happen to the automobile; did something happen to the seat that you were sitting on?

A They ripped the seat, the door.

Q You mean that they ripped the door and the seat, that they were ripped off?

A Everything.

Q In other words, the struggle was such that the door and seat was actually pulled out of the car as they were beating you?

A The door was ripped off because they were pulling me so much. They were pulling on the door.

Q What happened to the seat?

A I don't know. Afterwards, after they pulled me out.

Q Did the seat get pulled out with you?

A Everything came out because I was holding on. I was holding on.

Q When you were on the ground what happened to you outside the car?

A They continued hitting me and then after that they took me, they placed me in a car face down and they tied me up like this (indicating.)

Q You are indicating with your hands behind your back?

A In back. In order to put me on the floor. They tied me up, they tied up my feet and they placed a blindfold on and they placed a hood over my head and then we left.

Q How did they get you into the automobile? Did they use any force to get you in the automobile and then put you on the floor?

A By force.

Q And, what force did they use; will you describe that, please?

A Every type of force they could apply, kicks everything.

Q Describe the force, please because the Court doesn't know what happened to you?

A They took me like that and they started kicking me. They even punched me with their boots.

Q Did they kick you?

A Kicks. They hit me with their machine guns and I already told you that they hit me with the guns.

Q Did they do anything else?

A Besides that not too much.

Q On what parts of your body did they hit you?

A I was wearing a jacket which was all torn on the neck, on the neck, two or three times.

Q What happened to you after you were driven away from the place in the position that you were lying on the floor?

A We left.

Q And, where did you go?

A I figured it was about a ten-mile ride. Ten, fifteen-mile ride and then they stopped. And, all along the trip they continued to hit me, kick me with their feet on top of me. And after that I figured well, I don't know, I was dazed. They stopped at a given location and they took me, they took me out of the car and then they had me take my pants down and they gave me two injections.

Q Where did they inject you; in what part of your body?

A Here in the buttocks.

Q Did you have your hood, was your hood still on your head?

A All the time.

Q They never took it off again?

A No. Don't ask me that question again because they never took it off.

Q What did you feel in your buttocks that made you feel that you received an injection?

A Just an injection is what I felt.

Q What happened after you were injected?

A After that we stayed for awhile. I was on the floor and they untied my feet and they took me and they placed me in the airport because I believe, it was an Air Force camp. From there, I don't know how long we stayed up in the air and then we landed and they took me again, they took me in a station wagon, I don't know whether it was a station wagon or a van and the van left.

I don't know how long we drove. Again, they threw me in some sort of place and they threw me on the floor. I was on the floor from there, I don't know how long, after maybe after a half hour, maybe one hour and then they put me in a strait jacket.

Q Now, where were your hands and arms when they put you in the strait jacket?

A Inside. First they took off whatever they had tied me with, my hands -- they tied my hands in back and then I put my hands like that (indicating.) And from that point on they never took that off either.

Q Did they take the hood off your head at any time?

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A No. They took the hood off but later on. But that came later on.

Q Describe for us what happened during the trip in the plane and the trip in the car and now, you are wearing a strait jacket, were you hit or were you beaten at any point on this trip?

A All the time. All the time. That was the best part.

Q What do you mean the best part?

A That was like the dessert.

Q In other words, they continually beat you?

A Every once and awhile they came and bam.

Q What did they hit you with; was it their fists or was it with an instrument?

A With their hands and with instruments but I couldn't see.

Q And, what part of your body did they hit?

A On the head two, once in awhile. And, after that it was specifically on my feet because since, I had this strait jacket on.

Q Did they hit you on your feet most of the time?

A Yes.

Q By your feet, do you mean your feet or your legs?

A The legs and the feet.

Q Now, do you know what kind of building you were in?

A That was after they took me out again.

Q How long were you in this building that you were in?

A I don't know but maybe two hours. I can't really tell. From there then they put the strait jacket on me and they took me out, they took me out then and at a given point I heard other people in the same circumstances as myself were put into the van.

Q Now, you were now put into another van?

A Yes.

Q Now, you say that you heard other people were put in the van?

A I believe that. I believe it was a van.

Q Now, whatever it was, how did you learn that?

A Because I heard a woman who kept saying they are going to kill me.

Q Did you hear anybody else say that?

MR. SCHLAM: Your Honor, I am not going to object to hearsay because a jury isn't present. For the record, I want to bring your Honor's attention to some of those statements. Most recently, the statement which is being attributed to the woman is to my knowledge hearsay and I will object to it for the record.

THE COURT: The objection is sustained. I will not take evidence of what somebody else said.

A I answered that question in that way because I was asked how I learned.

THE COURT: And I sustain the objection to the question. Next question.

BY MR. GALLINA:

Q Mr. Chiappe, do you know where you were taken after you were now put in this new van?

A From there we continued to drive for awhile and at a given point they told us to come out of the bus and they tied, I was tied and afterwards I learned that the others were also tied.

MR. SCHLAM: I object to that statement.

THE COURT: The objection is sustained. Strike it out.

Unless you saw them tied don't testify to it. Did any of the people that were being beaten, did they tell you about it in the presence of anybody else, did they tell you about it in the presence of anybody else, without you telling us what they said?

THE WITNESS: They didn't say anything to me. I just heard.

BY MR. GALLINA:

Q You overheard what they said; is that what you are saying?

A I could hear, I could hear.

Q What did you hear?

A I heard people talking.

THE COURT: Did you hear what they were saying?

THE WITNESS: The people who were with me you mean?

THE COURT: Yes.

THE WITNESS: Always the same thing. They are going to kill me.

THE COURT: What language were they speaking?

THE WITNESS: They spoke Spanish.

BY MR. GALLINA:

Q Did you hear anybody speak English?

A Yes, but those people were not the ones, I heard English spoken from. It was on the other side.

THE COURT: Where did you hear people speaking English?

THE WITNESS: I am going to say something because I have already said that in that house which I believe to be a country house, I believe it was a country house, you could hear the people talking because there was a group of people who came and went. At that point, is when I heard English spoken.

THE COURT: At the time you were in the country house where you were being beaten?

THE WITNESS: Before I heard the people say that they were going to kill us, they weren't kidding, they were kicking me.

THE COURT: Mr. Chiappe, please answer my question: At the precise time you heard English spoken, were you beaten at that point?

THE WITNESS: When I was being hit I heard English being spoken. That doesn't mean that was the person who spoke English who hit me.

THE COURT: Was it at the time you were

being hit?

THE WITNESS: I tell you I spent five days and when I arrived here in this country there was a man there and I told him that I heard English being spoken but I told him that I couldn't say it was Americans.

THE COURT: Now, would you answer my question: During the time that you heard English spoken, tell us exactly what was happening to you in relation to any blows that you were receiving or the condition that you were in?

THE WITNESS: Myself? I was tied up at the feet. I believe I was tied to the foot of a bed and I was, I had my strait jacket on.

THE COURT: So, you were under restraint when you heard English spoken; is that correct?

THE WITNESS: You almost hear English spoken everyday but I cannot say that these individuals were the ones who were hitting me.

THE COURT: I want to know whether these blows were struck at the time you heard English spoken?

THE WITNESS: That I can't tell you. That I can't tell you exactly.

THE COURT: And at that moment were you together with Miguel Russo?

THE WITNESS: Why, because Miguel Russo, that is one I knew and he's one who spoke English. I mean Italian.

THE COURT: Were you together with Miguel Russo prior to the time you arrived in this country, at that moment?

THE WITNESS: He was with me everyday.

BY MR. GALLINA:

Q Did you ever tell Miguel Russo that you heard English spoken when you were under restraint or while you were beaten?

A No, when we were tied.

THE COURT: At any time up to the present time?

THE WITNESS: He never told me --

THE COURT: Strike that out. I am interested in whether you told Miguel Russo?

THE WITNESS: But he also heard.

THE COURT: Will you please listen to my question, Mr. Chiappe: You understand a little English, don't you?

THE WITNESS: Yes, a little English.

THE COURT: Then answer my question as translated. Did you ever tell Miguel Russo that you heard English spoken while you were beaten?

THE WITNESS: That is what I don't understand, you are talking about when I was beaten?

THE COURT: At any time or when you were in the country house, from that time until the present time, sitting in this witness chair, at any time, did you ever say to Miguel Russon I heard English spoken while I was being beaten?

MR. GALLINA: Objection, your Honor. That is not relevant.

THE COURT: You smell a potential witness Mr. Gallina.

THE WITNESS: Listen, we didn't speak to Miguel Russo on that when we were --

THE COURT: Mr. Chiappe, answer my question yes or no. Did you ever tell Miguel Russo that you were being beaten at the same time you heard English spoken?

THE WITNESS: I have already told you Miguel Russo, the same way --

THE COURT: Strike out the answer. Just tell me yes or no or tell me you can't answer the question yes or no. I'll try it once more and then I will give up. Did you ever say to Miguel Russo while English was being spoken, I was beaten, down in Argentina?

THE WITNESS: That I was beaten when English was being spoken?

THE COURT: Did you ever tell that to Miguel Russo?

THE WITNESS: No.

BY MR. GALLINA:

Q Mr. Chiappe, how many days were you held in this farmhouse blindfolded in a strait jacket?

A Six days.

Q During that period of time, did you hear English spoken everyday?

A But I already said yes.

Q During the times you heard English spoken, do you recall being beaten at those times without knowing who it was that beat you?

A I do not want to answer it, your Honor but I cannot it. How could you possibly even think about English when you are half dazed, how do you expect that?

MR. SCHLAM: Move to strike the statement.

THE COURT: Strike it out as non-responsive.

BY MR. GALLINA:

Q Were you conscious at all times?

A I was conscious but I don't know how conscious I was.

Q Did you sleep at any time?

A Not much. You can't sleep much.

Q Were you ever hit unconscious, were you hit in such a way that you were knocked unconscious?

A I was just a little dazed but that's all.

Q But afterwards you were cognizant?

A Yes.

Q Were you given any injections while you were in the farmhouse?

A No.

Q Were you given any food for the five days that you were in the farmhouse?

A No. The only thing that they gave us, one day they gave us a cup of broth and an egg and a little piece of bread because I couldn't eat because my teeth were gone.

Q Was that towards the end or was that during the beginning or near the end of the six days that you were in the farmhouse?

A I believe it might have been the third or fourth day.

Q Were you allowed to go to the bathroom to relieve yourself?

A No.

Q Did you relieve yourself in your own strait jacket and clothing that you had on?

A You had to go to the bathroom in your trousers.

Q And, that's the way you were left there?

A Always.

Q While you were lying in the farmhouse, from your hearing, could you determine how many other prisoners there was besides yourself?

A As far as I thought, there was four of us.

Q Do you know what happened to the fourth one?

A I don't have too much connection with that in Argentina because I didn't know who or what but Orsini knew who that person was.

MR. SCHLAM: I object to the statement.

THE COURT: Strike it out.

A He never went back to his house.

MR. SCHLAM: I object to that statement.

THE COURT: Strike it out.

BY MR. GALLINA:

Q Mr. Chiappe, were you given any medical treatment during the days that you were lying there in that farmhouse?

A No.

Q Now, during the period of time that you were in the farmhouse, was the hood taken off your head, but the mask or blindfold was left on your eyes; is that correct?

A The blindfold was on all the time.

Q At any time, were you able to see any of the faces through the side or through any openings in the blindfold?

A Once.

Q And, could you describe what happened on that occasion?

A They came, they called me, they touched me, rather, the blindfold did that (indicating.)

Q You are indicating a similar manner in which glasses would slip down?

A The blindfold came down like that and I am almost certain at that point I saw an American policeman.

Q Did you recognize that policeman here in this courtroom?

A Yes.

Q Did you ever point him out to anybody?

A I showed him to the lawyer.

Q Which lawyer, you mean myself?

A Yes.

Q Do you recall, I believe you identified Agent Corçoran?

A I believe.

THE COURT: At what point did you see Agent Corcoran?

THE WITNESS: He was seated there (indicating) and I saw him in the building also.

THE COURT: I am talking about when did you see him before?

THE WITNESS: Before, I saw him when the blindfold slipped down.

THE COURT: And, where was that?

THE WITNESS: The day before I left, I believe before I was placed in the airplane.

THE COURT: Wait, please -- I was just

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going to ask him what day? Were any beatings going on at the time you saw Mr. Corcoran?

THE WITNESS: No. I can't say. I didn't say that.

THE COURT: Please, just answer my question: How long before you saw Mr. Corcoran was it that you got your last beating?

THE WITNESS: They didn't hit me anymore.

BY MR. GALLINA:

Q For how long before you saw Mr. Corcoran was that?

A When I was there they were not hitting me anymore because that was the day before we got into the plane.

THE WITNESS: If you will allow me, your Honor, I could even tell you something.

BY MR. GALLINA:

Q What else happened to you, please describe it for us?

A I want to say that what I just said about the policeman, even in the airplane, there was a man seated next to me who had glasses on and I asked him, he came to say, and I asked him about the person, that's all.

Q You are in the airplane, are you not?

A The American airplane.

Q You mean when you were being flown back to America?

A Yes.

Q There was an agent or policeman, whoever it was that was seated alongside of you with glasses, did he speak to you in Spanish?

A Very well.

Q And, what did he say to you and what did you say to him?

MR. SCHLAM: Objection, your Honor.

THE COURT: The objection is sustained.

BY MR. GALLINA:

Q Did you ask that agent whether he had been with you?

MR. SCHLAM: Objection.

BY MR. GALLINA:

Q (continuing) Whether he had been with you in the farmhouse?

THE COURT: I'll allow it.

A Not the one I have indicated but rather the one, the one who was next to me with the glasses.

Q Did you ask whether he had been with you in the farmhouse?

A You mean the one with the glasses?

Q Yes.

A Yes, I told him that the man over there came to such and such house where we were being held.

Q Were you ever beaten while you were on the American airplane coming to the United States?

A No.

Q Now, you say that you were fed approximately the third day of your six days that you were in the farmhouse; were you fed on the day that you saw who you described as the American agent Corcoran?

A No.

Q And, were you fed the following day prior to getting on the airplane?

A No.

Q And, when I say being fed during all those days, I am including water, you were not given water; am I correct?

A No.

Q Were you spoken to during this six days that you were in the farmhouse by anybody speaking to you in Spanish?

A Not directly.

Q You heard Spanish voices who were not

prisoners; is that correct?

A Yes.

Q Did you hear those very same voices at any time speaking in English to anybody else in English?

A Listen. All I said is that I heard English being spoken but as to what was spoken that's impossible to say.

Q And, on each and every one of these days, were there long conversations in English?

A You heard, one could hear English being spoken.

THE COURT: Did you recognize any of the English words?

THE WITNESS: The interpreted English.

MR. SCHLAM: I object to that answer.

THE COURT: Did you hear any English words, do you know any English, do you know newspaper, you know what that means? Soda, do you know what that means?

THE WITNESS: Soda water --

THE COURT: You know what water means, do you know what water means in English?

THE WITNESS: English, aqua.

THE COURT: You know what that means? Food, do you know what that means?

THE WITNESS: Smoke.

MR. GALLINA: Your Honor, I object to this. This man was in prison in an American prison surrounded by American-speaking prisoners --

THE COURT: Would you like to take the stand Mr. Gallina --

MR. GALLINA: Six, eight months. Now to assume whatever he picked up is his English is not fair --

THE COURT: I'll give him a 30% discount on that. All right?

MR. GALLINA: Well, your Honor, that's not fair. This whole line of questioning is not fair. I object to it.

THE COURT: Do you speak English now?

THE WITNESS: Speak English now?

THE COURT: Do you understand more now than you did six months ago?

THE WITNESS: Six months, more?

THE COURT: More English?

THE WITNESS: Yes.

THE COURT: You watch television?

THE WITNESS: I watch it. Yes.

THE COURT: In jail, do you watch television?

THE WITNESS: Is he asking me do I watch television?

THE COURT: So he knew what I was saying? You understood when I asked you did you watch television?

THE WITNESS: Yes, I understood what the television says but not everything.

THE COURT: He has learned a lot in six months.

MR. GALLINA: I have no other questions.

THE COURT: I want to know whether he could identify any words spoken in English; can you recall any of the words spoken in English? Can you recall any of the words that you overheard while you were in that farmhouse, words spoken in English?

THE WITNESS: I tell you I heard this going on all the time. Oh, yes.

THE COURT: You see Mr. Gallina, he said that he understood a few things.

MR. GALLINA: I don't know what his grasp of the language was at that time.

THE COURT: If he is going to be consistent he might as well recognize a few words.

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BY MR. GALLINA:

Q When you were taken -- where were you taken from the farmhouse?

A They took me to the same place.

Q Were you blindfolded?

A All the time.

Q Were you still in the strait jacket?

A All the time.

Q And, did you have handcuffs on at the time?

A I had the strait jacket on.

Q Now, when you were put on the airplane, was the strait jacket taken off of you?

A No.

Q And, was you body cleaned or anything done prior to being put on the airplane?

A Let me explain to you. We were placed in a van and in the van we were taken to the plane and I was told that it was security measures and that they were sending us to Gruson in Argentina so they told me, you take the plane with the guard from the Argentine army and they took me and they had me sit down always in the strait jacket and always with the blindfold. The plane took off approximately a half, fifteen, twenty minutes later and they took the strait jacket off me. And, then they took the blindfold off.

At that point the American policeman came to tell me I was arrested by the Americans. The strait jacket was placed on me in Argentina and they took it off on the plane.

Q When the mask was taken off your face or the blindfold, was it taken off before the strait jacket was taken off?

A As I said very clearly they took it off, the strait jacket and the blindfold.

Q Were you able to see what happened to the strait jacket?

A I don't know.

Q Did you see any markings on the strait jacket to indicate the country of origin?

A No, I know that I was over the up in the air and they must have remained in the plane.

MR. GALLINA: I wonder if the government has any knowledge of where the strait jackets is?

THE COURT: I wonder too.

Go ahead to your next question.

MR. GALLINA: I have no further questions.

THE COURT: All right, Mr. Schlam, you may examine.

CROSS-EXAMINATION

BY MR. SCHLAM:

Q Mr. Chiappe, are you aware of the significance of the fact if English was being spoken during your incarceration in Argentina, to your claim in this Court today?

A I am just saying what I heard.

Q Are you aware that in order to sustain your claim pursuant to law it is necessary for you to prove that Americans were involved in any mistreatment you received in Argentina?

A I am saying what I saw and what they did to me. What I heard and what I saw and what they did to me.

THE COURT: Mr. Chiappe, will you please answer the question. It's a very simple question. Do you understand the significance of showing that Americans participated in your beating?

MR. GALLINA: Objection.

THE COURT: Overruled.

THE WITNESS: Please your Honor, excuse me but my answer, I think correct when I saw what happened to me.

THE COURT: Mr. Chiappe, will you answer the question, please? Try to answer the question. Try it once more Mr. Schlam.

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A I say what I saw happened to me. What the consequences or importance of it may be I don't have --

MR. SCHLAM: Mr. Chiappe, answer the question if you could yes or no.

MR. GALLINA: Objection, your Honor.

MR. SCHLAM: I'll ask your Honor to instruct the witness to answer the question yes or no.

THE COURT: Do you think you can answer the question yes or no? Do you understand it is necessary in order for you to sustain the claim which you are making, to prove that Americans agents participated in or were responsible for the beatings that you allege you received in Argentina?

THE WITNESS: Do I realize the importance?

THE COURT: Do you realize the fact that it is essential to your claim?

THE WITNESS: For me to prove it?

THE COURT: Yes, that is correct. For you to prove it.

THE WITNESS: Well, I said that I heard somebody speaking English and that I saw it.

THE COURT: Did you ever hear of a case called the United States against Toscanina?

THE WITNESS: This is the first time I heard it was here.

THE COURT: Just now?

THE WITNESS: I believe your Honor spoke of it the first or second day I was hear.

BY MR. SCHLAM:

Q Do you remember your lawyer talking to you about the Toscanina case?

MR. GALLINA: Objection.

THE COURT: Overruled.

THE WITNESS: Everybody speaks about Toscanina. I have never read it.

THE COURT: What we want to know is --

THE WITNESS: I read it in Springfield, in the hospital.

THE COURT: Who gave you the case?

THE WITNESS: That I believe, it was read to me by a prisoner. A prisoner read it to me.

BY MR. SCHLAM:

Q What do you understand this proceeding to be; what are you trying to prove?

MR. GALLINA: Objection, your Honor.

THE COURT: Overruled.

A That I was kidnapped.

Q By whom?

A By everybody who participated.

Q Do you understand that if you can prove that you were kidnapped by Americans that your case will be dismissed, is that your understanding?

MR. GALLINA: Objection.

THE COURT: Overruled. Answer that yes or no.

THE WITNESS: I can't answer it yes or no. Again, I can't answer that question because I came here to say, to explain my case.

BY MR. SCHLAM:

Q Mr. Chiappe, have you discussed this proceeding with your attorney Mr. Gallina prior to coming here today?

A No.

Q Had you ever had an occasion to discuss this motion that Mr. Gallina made on your behalf today, the motion that is being heard today?

A Mr. Gallina you mean about preparing it, yes.

Q And, Mr. Gallina explained to you what the requirements were in order for you to prevail in this motion; am I correct?

MR. GALLINA: Objection.

THE COURT: Overruled.

BY MR. SCHLAM:

Q Did you ask Mr. Gallina what was necessary for you to prove in order to get your case dismissed?

A You are going to get angry. I have to answer again, I know positively that I was kidnapped. I know that.

THE COURT: You don't want to answer that question, do you?

MR. GALLINA: I object.

THE COURT: It's a proper question and I find that the witness refuses to answer the question. Ask it of him one more time.

BY MR. SCHLAM:

Q Did you discuss with Mr. Gallina before you came here what was necessary to prove that this Court had no jurisdiction and that the indictment should be dismissed?

MR. GALLINA: Objection.

THE COURT: Overruled.

THE WITNESS: Could you repeat the question, please?

THE COURT: Will you rephrase it, Mr. Schlam?

BY MR. SCHLAM:

Q Did you ever discuss with Mr. Gallina what you required to prove in order to get your indictment dismissed on the grounds that the Court had no jurisdiction?

MR. GALLINA: Objection.

THE COURT: Overruled.

A I told Mr. Gallina what happened to me and I believe --

Q Mr. Chiappe, after you told Mr. Gallina what happened to you, did you ask whether what happened to you would be sufficient to enable you to have your indictment dismissed?

MR. GALLINA: Objection, your Honor.

THE COURT: Overruled. What is the ground, Mr. Gallina?

MR. GALLINA: The ground is it is an intrusion of privileged communication between myself and the defendant.

THE COURT: When he takes the witness stand he waives that privilege.

MR. GALLINA: Not on that basis.

THE COURT: I just said so --

MR. GALLINA: It's only an interested witness.

THE COURT: That's why he is interested. That's just the point. That's why it is relevant.

A I believe myself.

Q Did you ever discuss with Mr. Gallina what you said happened to you in Argentina and that it was sufficient to get your case dismissed?

A I told Mr. Gallina and Mr. Gallina, he's a lawyer.

Q Mr. Chiappe, we know that he is a lawyer and you are not a lawyer. Please try to answer the question yes or no or to the best of your ability.

MR. GALLINA: Objection.

THE COURT: Overruled.

Each time you make an objection, I want you to state the grounds.

BY MR. SCHLAM:

Q Did you ever ask Mr. Gallina whether, what you told Mr. Gallina had happened to you in Argentina was sufficient as a matter of law to have your case dismissed?

MR. GALLINA: Objection.

THE COURT: On what grounds?

MR. GALLINA: Privilege. Relevancy, it's answering a question of law which the man is not capable of answering.

THE COURT: Overruled.

A He said let's go to trial. It is enough or not?

Q Mr. Chiappe, --

A The government has to prove it.

Q Mr. Chiappe, are you concerned with the outcome of this hearing?

MR. GALLINA: Objection.

THE COURT: Overruled.

A Look, listen, the only thing I would like, myself is to have a tiny little thing recognized happened to me.

THE COURT: Mr. Schlam, please go to another subject. I am convinced that he refuses to answer that question.

BY MR. SCHLAM:

Q Do you recall Mr. Chiappe being brought, being arrested inside the United States upon your arrival on May 27th, 1976?

A No, I was arrested in the plane.

Q You came to the United States and you landed at John F. Kennedy Airport; am I correct?

A Yes.

Q And, that was on May the 27th, 1976?

A I believe so.

Q Now, thereafter on the same day, do you recall being brought to the prosecutor's office in this building?

A Yes.

Q And, do you recall the office to which you were brought was that of Mr. Freid an Assistant United States Attorney?

A Yes.

Q And, do you recall that Mrs. Clancy was there to interpret the conversation that was held in Mr. Freid's office that day?

A Yes.

Q And, did you have any difficulty in understanding Mrs. Clancy or speaking to Mrs. Clancy during the course of that interview?

A No problem.

Q Now, do you recall in that interview in Mr. Freid's office, there are also agents of the Drug Enforcement Administration?

A Yes.

Q And, do you recall Mr. Chiappe being asked by

Mr. Freid about the treatment you received in Argentina from the time of your arrest until the time that you had been expelled to the United States?

MR. GALLINA: Objection, your Honor.

THE COURT: On what grounds?

MR. GALLINA: The questions and answers were given in the absense of counsel and second, I have not been furnished with anything of those questions and answers.

THE COURT: Is that all the grounds that you can think of now, anything else?

MR. GALLINA: That's all.

THE COURT: The objection is overruled. May I have the question read back, please?

BY MR. SCHLAM:

Q Do you remember being asked by Mr. Freid about the treatment that you received in Argentina from the time of your arrest through May 21st, 1976 up until the time that you appeared in Mr. Freid's office?

MR. GALLINA: Objection, your Honor. I object on one further ground, competency of this witness to have answered the question at any time in view of his physical state, without food or water or, and addition, him being in the physical condition that he was in continuously and that all the circumstances are not being brought out in the question.

THE COURT: The Court will observe almost immediately thereafter, the Court will observe that he was brought into the courtroom and that he was well orientated.

BY MR. SCHLAM:

Q Do you recall Mr. Freid asking you during the course of that interview whether while you were in Argentina, if any Americans participated in what you have alleged to have occurred in terms of beatings there?

A Yes.

Q What was your answer to Mr. Freid?

A I answered to Mr. Freid that I heard American being spoken there.

Q Is it your testimony Mr. Chiappe that you told Mr. Freid that you heard American being spoken while you were in Argentina and before you came to the United States?

MR. GALLINA: May I have a continuing objection?

THE COURT: What are the grounds?

MR. GALLINA: The grounds being that counsel wasn't present and the defendant, was in a state of mental and physical collapse --

THE COURT: You are saying that his health is such that he could not answer the question?

MR. GALLINA: That is correct. He was neither fed nor given water after he left Mr. Freid's place --

BY MR. SCHLAM:

Q You told Mr. Freid, you are not testifying that you heard English spoken prior to your getting on the plane; in other words, while you were still in Argentina; is that correct?

A Yes.

Q Okay. Could you tell us what time the conversation was in the course of events in which you told Mr. Freid about Americans having spoken English in Argentina to that question, can you give your answer and tell us what was your answer to the best of your ability to recall now?

A Mr. Freid asked me if I had any complaint against the Americans; did the Americans do anything to you and I said I don't think they were Americans, I answered Mr. Freid I heard Americans speaking and I also told him --

THE COURT: Did you say that you heard Americans speaking or did you hear English spoken?

THE WITNESS: The end of the question but I don't know whether they were Americans.

THE COURT: The language is English not American.

THE WITNESS: I just heard English being spoken, please excuse me your Honor. But I wasn't through with English.

BY MR. SCHLAM:

Q Mr. Chiappe, did Mr. Freid ask you any follow-up questions after you made that statement to him?

A No.

Q For example, did he ask you whether you heard English spoken during the time that you were in Argentina?

A Can I answer you something please?

Q Answer the question, please.

A No, he didn't ask me that.

Q Did he ask you whether you had any clues as to who the person was who was speaking that English, that you claim you heard?

A He didn't ask me that.

Q Did he ask you where it was specifically that what you claim you heard was English, where you heard that spoken?

A He didn't ask me that.

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Q Did you tell Mr. Freid that the first time that you heard English spoken was on the airplane that brought you back to the United States?

A No, I told him before that.

Q And, your testimony now is that the only mention of the speaking of English was that you believe that it was mentioned during the course of the interview, by you with Mr. Freid?

A That was the only thing we had in that regard.

Q Do you recall approximately how long your interview with Mr. Freid lasted on May 27th, 1976?

A No more than ten minutes, a quarter of an hour.

Q Now, thereafter, do you recall being brought into this courtroom for the purpose of arraignment?

A Yes.

Q Do you recall that you were brought together with Miguel Russo?

A Yes.

Q And, that Mrs. Clancy was the interpreter again on your behalf and on behalf of Mr. Russo; is that correct?

A Yes.

Q Did you have any difficulty in understanding the proceeding that took place in this courtroom on May 27th, 1976?

A No.

Q Do you recall that during that process, during the course of your arraignment, you were asked certain questions by Judge Mishler; do you remember that?

A He only asked me one question.

Q Are you sure of that?

A Sure.

Q There is no doubt in your mind?

A No. Me precisely?

Q Do you recall the question that Judge Mishler asked you?

A Yes, during the trip, were you properly treated and I said, "Yes."

Q And, Mr. Chiappe, let me ask you, that's the only question that you remember Judge Mishler asking you during the course of your arraignment on May , 1976?

A No, no. He asked me about lawyers. About the fact that I had no money to pay a lawyer. Your Honor was going to see if he could give me a lawyer and things like that. I thought you were only referring to the trip.

Q Let's talk about your treatment, do you recall Judge Mishler asking you only one question about your treatment from the time of your arrest in Argentina up until the time you were arraigned in this courtroom?

A One question?

Q Do you recall that Judge Mishler asked Miguel Russo about how he was treated from the time of his arrest up until the time of his arraignment?

MR. GALLINA: Objection.

THE COURT: Overruled.

A But that's where all the confusion is raised.

Q Did you listen to the questions that Judge Mishler was asking of Mr. Russo?

A He also asked me.

Q Did you listen to the questions that Judge Mishler asked of Mr. Russon during your joint arraignment?

A I don't remember, honestly.

Q Was Mr. Russo in the same courtroom with you during the time of your arraignment, do you remember that?

A Yes.

Q Do you remember whether any questions were asked of Mr. Russon during the course of the arraignment?

A I don't remember. Give me some questions and if I can remember I will tell you.

Q You wouldn't hold back on it?

A I wouldn't hide that.

Q Is there anything that you would hide, Mr. Chiappe?

A Nothing at all.

Q Do you remember being asked by Judge Mishler the following question and giving the following answer: I am going to read question and answers to you and tell us if you remember it? I am now quoting from Page 54 of the transcript of May 27th, 1976, beginning at line 2 -- this is a question between the Court and Mr. Chiappe.

"THE COURT: Mr. Chiappe, do you claim that the Argentine police or law enforcement there, abused you in Argentina?

Answer: No."

Do you recall that question and that answer?

A No, I couldn't have because I was all marked up or I didn't understand because I was marked. I was marked.

Q In other words, you don't remember that question and that answer?

A To tell you the truth, I don't know.

THE COURT: I might say, I would like to see the original transcript and that might be American police instead of Argentine police.

Who was the Court Reporter? I am sure

that I did not say the Argentine police. If I did I meant to say American police.

You know, Mr. Gallina, you are making certain faces. You will   Mr. Gallina. I know it is easy for you to say what occurred but you were not there when it happened. Don't smirk -- I meant when I asked that question, I meant the American police. It makes no sense in its present context. There is no question on my mind that he was beaten by the Argentine police.

MR. GALLINA: There has been no proof so far as to who beat the defendant.

THE COURT: Now, listen, Mr. Gallina, I just made a statement. I didn't like your expression of disbelief. I resent it.

MR. GALLINA: Your Honor, this is an expression of --

THE COURT: Go ahead, Mr. Schlam.

MR. GALLINA: Your Honor, you're assuming a state of mind that when you mention Argentine police he must have known it was American.

THE COURT: In the context of the meeting in the same place, if my recollection is correct, I think I noted for the record that there was injuries here. There is no question in my mind about it so that is the way it reads now.

How about it, do you claim Argentine police or any law enforcement there abused you in Argentina and the answer is no, it doesn't make sense. It does make sense if you substitute American police.

You surely are a disrespectful lawyer, Mr. Gallina.

MR. GALLINA: I am not, your Honor.

BY MR. SCHLAM:

Q Are you aware on the day that you first came before a Judge of the United States, that being Judge Mishler, would you say you were concerned with the treatment you received at the hands of Americans, American hands?

MR. GALLINA: Objection, your Honor.

THE COURT: May I have the question read back.

(Whereupon, the Court Reporter read back the last question.)

THE COURT: Overruled. I'll allow it.

BY MR. SCHLAM:

Jo.

Q Yes or no?

A The only thing that I can say that I understood was about the trip -- I was asked during the trip were you mistreated, during the trip? And I answered, "No."

Q Did Judge Mishler as far as you can remember at any time during the arraignment, in talking to you restrict his inquiry as far as you can recall to the plane trip?

MR. GALLINA: Objection, your Honor.

THE COURT: Overruled.

MR. GALLINA: The record speaks for itself.

A As far as I understood can I base my answer on what I understood?

Q I'm asking you whether you remember Judge Mishler in any way restricting his inquiry about your treatment to the plane trip?

MR. GALLINA: Objection. Argumentative, your Honor.

THE COURT: I'll allow it.

A As far as I am concerned, yes.

Q What question or what words do you recall Judge Mishler using that led you to believe he was only concerned about your treatment on the plane?

A Because his Honor the Judge, I believe I heard the Judge, he asked me during, when the Americans took you, were you mistreated and I can't answer no because we were very well treated on the plane.

Q Now, do you recall your being asked by Judge Mishler and your answering the following question:

"Question: Do you claim any agent participated in any way in that activity?

and your answer was:

"Answer: No."

Do you remember that question and that answer?

MR. GALLINA: Objection, your Honor.

A No, it would be like I said. I said that I did not remember.

Q Do you remember Judge Mishler in his following question, in the following question and answer:

"Question: Neither here nor in Argentina, I am talking about American agents?

and your answer was:

"Answer: No, sir."

Did you give that answer to that question?

A Listen to me carefully. I cannot say when. I cannot say to one gentleman when I just arrive that I heard English spoken and then if I understood the Judge correctly, I am going to say something else.

Q Mr. Chiappe, do you have a bullet wound in your body at all?

A Two, three, four.

Q Were you shot during the period of incarceration in Argentina prior to your expulsion here?

MR. GALLINA: Objection, your Honor.

THE COURT: Overruled.

A No.

Q Did you ever tell Mr. Ballina that you had been shot during the time, during the time prior to your being expelled here?

A No.

Q Does any bullet wound that you have, have anything to do with your expulsion from Argentina to the United States?

A These are wounds, war wounds.

Q Do they have anything to do with your being expelled from Argentina to the United States or any of the activities that are concerned with your arrest of May 26th, 1976?

A No. This is a war wound.

Q Did you ever indicate to Mr. Gallina that it

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had anything to do with the activity or what happened to you after your arrest on May 21st, 1976?

A Maybe Mr. Gallina misunderstood. Because, I explained to him about a different thing. That in Argentina they don't give presents away.

Q But, he would be the one that made the mistake, not you?

#8

A Yes.

Q This Agent Corcoran, that you say you observed during your incarceration in Argentina, is he in the courtroom today?

A I was not in jail. I didn't spend the days in jail.

Q He's in the courtroom, the agent that you claim was in Argentina, is he in the courtroom today?

A No, he is not here.

Q When did you see him in the United States?

A I saw him the first time I came to your office -- not in your office but in a different office.

Q And, you say his name is Agent Corcoran?

A It was a blond man who was with that man who is over there (indicating.)

Q Did you testify his name was Mr. Corcoran?

MR. GALLINA: I believe I tried to

Court that there was an American who you saw during the period of your incarceration in Argentina; is that correct?

A I showed Mr. Gallina the man on the day that I came in your office.

Q And, you pointed him out to Mr. Gallina, am I correct?

A Yes.

Q What did you say to Mr. Gallina when you saw him?

A It's that man. The one that I saw in Argentina.

Q Who was present when the blindfold was slipped off and you had a chance to see him?

A Yes.

Q You testified that you knew his name was Corcoran, am I correct?

MR. GALLINA: Your Honor, may I approach the bench. I think I can clarify the situation.

THE COURT: No.

MR. GALLINA: I want to explain something to Mr. Schlam.

(Whereupon, an off the record discussion was held at the bench.)

BY MR. SCHLAM:

Q Mr. Chiappe, how did you learn this person was named Corcoran?

A Mr. Schlam, I have already told you a minute ago that the lawyer told me.

Q Your lawyer told you that his name was Mr. Corcoran?

A Yes, because I told him who it was.

Q Did he ask you or discuss with you, Mr. Gallina, whether or not he tried to conduct an investigation as to whether or not Mr. Corcoran was in Argentina at the time you claim he was?

A I saw him myself.

Q Mr. Chiappe, are you aware that if you could produce an American agent to cooperate your testimony that that would help your case?

A But I am telling you the truth here. That's all I have.

Q Did you hear my last question?

A You want me to say that if I am successful --

Q Did you hear my last question, yes or no?

A Please repeat it.

Q Are you aware that if an American agent took the witness stand and corroborated your testimony to the effect that he was present while you were being beaten, that

that would help your case; yes or no?

MR. GALLINA: Objection. Argumentative.

THE COURT: Overruled.

A How could that assist me or help my case?

THE COURT: His answer is that he doesn't know because it's taking too long to get a no answer.

MR. GALLINA: Your Honor, I think that we ought to identify Mr. Corcoran, Agent Corcoran.

MR. SCHLAM: This is Agent Corcoran, Agent Corcoran of the Drug Enforcement Administration who is the case agent on this case. If your Honor pleases, we can get Mr. Corcoran to testify.

THE COURT: Just ask Mr. Chiappe if that is the man he saw down in Argentina, would you stand Mr. Corcoran?

THE WITNESS: No, I saw him next to me but the man I saw is a blond who was with him on the day that I was brought to see the tapes, the television tapes and he accompanied this man.

THE COURT: Can you identify the man who Mr. Chiappe is talking about?

MR. CORCORAN: Doug Columbo.

THE COURT: He says that is the same man

that was present when the blindfold fell off the day before he boarded the plane to come to New York.

MR. SCHLAM: Columbo is assigned to the New York office, your Honor.

MR. GALLINA: I have a few more questions your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. GALLINA:

Q Would you say the person you saw in Argentina when you were blindfolded, when the blindfold slipped, is the same agent you saw in this building the day that you were allowed to listen to the tapes; is that correct?

A Not this one. I understand that it is Columbo.

MR. GALLINA: I have nothing further, your Honor.

MR. SCHLAM: Nothing further, your Honor.

THE COURT: You may step down.

MR. GALLINA: At this time, I would ask the government to reveal to the defendant what agents if he knows, if any, that were present in Argentina at the time of this man's incarceration?

THE COURT: You mean present while the beating was going on or just agents in Argentina?

MR. GALLINA: Present or in sight of his beatings while he was being held.

THE COURT: What do you say to that?

MR. SCHLAM: Our investigations indicate no agents were present, no agent had knowledge about any beating and we had nothing to do whatever, to do with it. Our evidence indicates and if it is necessary for us to go forward, we will show that we took every conceivable precaution that Mr. Chiappe was well treated during his period of incarceration in Argentina and that the facts are directly contrary to the thrust of the defendant's motion.

MR. GALLINA: It is his statement clearly that there were no agents present?

THE COURT: Mr. Schlam says he knows of none.

MR. SCHLAM: That is correct, your Honor.

MR. GALLINA: Were there any agents of the State Department or C.I.A.?

MR. SCHLAM: No. I want to make the representation that there were no State Department or C.I.A. people there.

MR. GALLINA: How about agents in behalf of the investigation by the government in behalf of the United States who was present at that site where this man was beaten?

THE COURT: I understand that Mr. Schlam is direct and absolute in his representation that there was no agent authorized to, by our government to take part in this investigation that was present or outside of the door of the beatings.

MR. SCHLAM: That's our representation.

THE COURT: I want you to proceed with Mr. Freid.

MR. SCHLAM: Your Honor, Mr. Freid is available to testify but it is our position that this is incredible testimony. We'll go ahead anyway.

BERNARD FREID, called as a witness, having been first duly sworn bythe Clerk of the Court, testified as follows:

MR. SCHLAM: Your Honor, before I start there is someone -- and I'll just hurry waiting outside my office.

I wish to say from the standpoint of the scope of Mr. Freid's examination, it will cover all of the events that occurred, leading up to the expulsion of Mr. Chiappe. Just the events.

THE COURT: If he knows of the activities of our government, why should that be on the record?

DIRECT EXAMINATION

BY MR. SCHLAM:

Q Mr. Freid, will you tell us by whom you are employed?

A I am an Assistant United States Attorney in the Office of the United States Attorney for the Eastern District of New York.

Q How long have you been an Assistant United States Attorney?

A A few weeks less than four years.

Q Calling your attention now to the month of March of 1976, what was your specific position in the United States Attorney's office?

A I am Chief of the Narcotics Section of that office.

Q Now, did you become aware, in March, 1976, were you familiar with a gentleman by the name of Francois Chiappe?

A Yes.

Q Where did Mr. Chiappe reside in March of 1976?

A In Argentina.

Q What did you believe Mr. Chiappe's occupation to be?

A A narcotics trafficker.

Q In your experience, could you tell us please, at what level Mr. Chiappe was at, if any in terms of narcotic trafficking?

MR. GALLINA: Objection.

MR. SCHLAM: Your Honor, that's a preliminary question.

THE COURT: For what purpose?

MR. SCHLAM: It has to do with the expulsion.

THE COURT: I'll sustain the objection.

BY MR. SCHLAM:

Q Did there come a time Mr. Freid, that you became involved in a discussion concerning the possible expulsion of narcotic drug traffickers who were living in Argentina?

A Yes.

Q And, approximately when did those discussions begin?

A They began immediately after the fall, the overthrow of the Argentine government. It was in the middle of March, 1976.

Q Did you have occasion at the end of March, 1976 to be present at a meeting with the Justice Department in Washington, D.C.?

A Yes.

Q To the best of your ability, tell us who was present during that meeting?

A There were representatives of the Drug Enforcement Administration, of Immigration and Naturalization Service, representatives of the Criminal Division of the Department of Justice, the Narcotics and Dangerous Drugs Section and myself and a special agent from Narcotics and an agent from the Buenos Aires District Office.

Q Do you recall his name?

A Gregory Phillips.

Q Do you recall a meeting taking place on March 31st, 1976?

A I do.

Q During the course of that meeting on March 31, 1976, did you discuss with Agent Gregory Phillips of the Buenos Aires District Office about the treatment for any fugitives in the future who may be expelled by the

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government of Argentina?

A Yes.

Q Could you tell us what the substance of that conversation was?

A Well, we advised him that in the expulsion of narcotic traffickers from that country to this country that it would be legal as long as there was no physical mistreatment of that person by an American agent or by an agent of a foreign country acting as a representative or at the direction of the American government as far as, as long as the foreign at the highest level of government would consent to the expulsion if there was no mistreatment, we would obtain the proper jurisdiction.

I discussed with them the Toscanina case and the and I think at the time the Lujan Luhunc case.

MR. GALLINA: I object to the question. There is no relevance.

THE COURT: The objection is overruled. Motion denied.

BY MR. SCHLAM:

Q Thereafter Mr. Freid, did you travel to Buenos Aires, Argentina?

A Yes, I did.

Q You arrived there on April 27th, 1976?

A That is correct.

Q Who were you with when you arrived there?

A I was traveling with Louis Fields who was a legal advisor to the Department of State.

Q Approximately what time of the day did you arrive?

A I believed I arrived about 9 o'clock that evening.

Q On the next day, April 28th, 1976, did you and Mr. Fields have a meeting with the American representative?

A We did.

Q On the morning of that date, who did you meet with?

A On the morning of that date the agent in charge of the Buenos Aires District Office named Rayhn Tryan and another agent assigned to the office, Gregory Phillips, [redacted].

Q The discussions that you just referred to concerned possible expulsion of narcotics traffickers by the Government of Argentina?

A Yes.

Q During the course of the discussions did you mention or was it mentioned, was the Toscanina case mentioned, as far as the subject of the treatment of its fugitives, should they be expelled by the Government of Argentina?

A Yes.

Q Could you tell us what part of the discussion was that on April 28th, 1976?

A In discussing possible expulsion of narcotics traffickers I made it very clear that there can be absolutely no mistreatment of any kind by Argentine authorities. That the Argentine authorities be instructed when they arrested these persons that they were not at all to mistreat them. There was to be no physical abuse, no mistreatment of any kind that they would be treated with a great amount of care. There were other different things that we were talking about.

MR. GALLINA: Objection. The question has been asked and answered.

THE COURT: The motion is denied.

BY MR. SCHLAM:

Q Did you explain to the Americans at that conference of their participating in the possible mistreatment of fugitives by the Government of Argentina?

MR. GALLINA: Objection.

THE COURT: Overruled.

BY MR. SCHLAM:

Q Tell me, please, what part of your conversation that was?

A I explained to the agent if there was any involvement with them directly or indirectly, any mistreatment of any persons who were being arrested by a foreign country to be expelled from that country that the case in effect, would be thrown out in the United States.

Q Mr. Freid, moving on to the next day April 29th, 1976, were you still in Buenos Aires?

A Yes.

Q Did you have occasion on that date to see the American Ambassador to Argentina?

A Yes.

Q Is that Mr. Robert Hill?

A Yes.

Q Was Mr. Fields with you at that time?

A Yes, he was.

Q Was Agent Tryan the special agent in charge of the Buenos Aires District Office with you during the meeting with Ambassador Hill?

A Yes.

Q Did the subject of the treatment of possible expellees come up?

A Yes.

Q Would you please tell us that part of the conversation, what that was on April 29th, 1976?

A I explained to Ambassador Hill what the effect would be in the United States of the expulsion in the courts. In that conversation I again pointed out the Toscanina case and the ~~Lera~~ Lujan case and at that time the Lera case and in fact I discussed those cases by name.

I said that an American agent to have no participation directly or indirectly, that in fact, that persons apprehended by the Argentiné government, that those persons should be treated with the upmost care. If there is improper treatment and it came out that undoubtedly it would come out in an American court that the case would be thrown out and that it would just be causing an unnecessary amount of work for everybody. Essentially that was the message that I went down to Argentina to convey. To make clear to the agents there the role that they are to take and to get it across to the Argentine government.

Q Now, did you understand that Mr. Fields and Ambassador Hill were to meet with the Argentine Minister of the Interior?

A Yes.

Q Did you understand that they were to meet with him on the afternoon of April 29th, 1976?

A Yes, they were.

Q That evening, did you have occasion to meet with Mr. Fields?

A I did.

Q Was it during the course of a dinner?

A Yes, I was actually waiting for him to come back to the Embassy.

Q Could you tell us what conversation there was between you and Mr. Fields about the meeting with the Argentine Minister of the Interior concerning the treatment of possible expellees?

MR. GALLINA: Objection.

THE COURT: I don't think that I will take hearsay. I am trying to think of the basis for introducing an expression of American policy. After all, I think the conversation of Mr. Freid is an expression of American policy.

BY MR. SCHLAM:

Q Mr. Freid, I would like to call your attention now to May 27th, 1976 and I ask you if you were working on that day?

A I was.

Q Were you in your office?

A Yes.

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Q Did you have occasion to meet Mr. Francois Chiappe?

A Yes.

Q Do you see him in the courtroom?

A I do.

Q Would you point him out, please?

A He's sitting at the defense table wearing a black jacket talking to Mrs. Clancy.

Q Approximately what time of the day was it that you first encountered Mr. Chiappe?

A Approximately 1:40 in the afternoon.

Q And, tell us please as best you can the circumstances under which you encountered Mr. Chiappe?

A Well, Mr. Chiappe just before that arrived at Kennedy Airport with Yolanda Samiento and Miguel Russo and I so directed that they be brought to my office by agents of the Drug Enforcement Administration. They were brought to my office by a number of agents and there were at least one or two others, Assisting U.S. Attorneys and Mrs. Clancy who was acting as Interpreter.

Q Can you give me the date again?

A May 27th at approximately 1:40 P.M.

Q Was Mr. Chiappe advised of his rights?

A Yes, he was.

Q That was done by you?

A That is correct.

Q Did you have occasion during the course of your conversation, by the way, Mr. Freid, how long did your interview last with Mr. Chiappe, approximately?

A Well, what actually happened the three of them were together and I spoke very briefly, perhaps for five or ten minutes at the most.

Q The three being who?

A The three being Chiappe, Russo and Samiento. I instructed the agents to take Samiento and Russo out of the room and I was left in the room with Mr. Chiappe, with Mrs. Clancy, Special Agent Corcoran, Special Agent Michael Tobin, both of the Drug Enforcement Administration and I believe this other Assistant U.S. Attorney was present until 2:40 P.M.

Q How long approximately were you with Mr. Chiappe?

A Probably 45 to 50 minutes.

Q During the course of that conversation Mr. Freid, did you put questions to Mr. Chiappe about his treatment from the moment of his arrest in Argentina on May 21st, 1976?

A I did.

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Q And, did Mr. Chiappe answer those questions?

A He did.

Q Could you kindly give us the substance of the conversation you had with Mr. Chiappe concerning his treatment from the moment of arrest until the time that he arrived in New York?

MR. GALLINA: Objection. I object on the grounds that he was not represented by counsel and on the grounds of his competency at that time to answer questions and on the ground of relevancy at that point.

THE COURT: It's particularly relevant.

A Well, earlier, I asked Mr. Chiappe and Mr. Russo and Mr. Samiento together about their treatment on the plane and they told me that they were properly treated by the Americans. I think the phrase that they said was that they all agreed that they were happy to be on American land.

Then I asked Mr. Chiappe when we were alone in my room, the defendant with the other government personnel to tell me about the arrest; what happened to him in Argentina and he was anxious to do so in my opinion. He said he was with his wife in the city, the name I don't recall and he was either walking or in a car when ten or twelve men came

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by and arrested him. They did not identify themselves as police officers and he thought they were Argentine guerrillas and he said that he thought that because he was being taken hostage or being kidnapped by guerrillas.

That he was beaten, he was battered by pistol. His teeth were knocked out by the pistols and that openedly he was bound and tied and blindfolded and taken from the place where he was with his wife to the airport and then flown by airplane. He didn't recall the airport and he was taken by airplane to another location. He was blindfolded and taken to some room. He said he was taken to some room and he heard, he heard persons who said well, Mr. Miguel Russo and the name Yolanda was present and he was kept in the room for about five days blindfolded that entire time and he was finally told, he was taken to some village for security purposes.

He was still blindfolded and he was taken from whatever room or whatever building he was in to the airport and that he walked on an airplane and when he got on to the airplane the doors closed and he at that time was unblindfolded and his arms were untied and he found out that he was in the custody of American agents on board a Braniff plane to the United States.

Q Mr. Freid, did you ask Mr. Chiappe specifically whether during the period of his arrest on May 21st, 1976 and before he got on the Braniff plane if he had seen any Americans?

A I asked him the question readily and he said that he did not see any Americans or anybody he saw was an American.

Q Was that his uniform answer?

A Consistently.

Q He never deviated from that answer?

A That is correct.

Q You were sitting in the courtroom during Mr. Chiappe's testimony; is that correct?

A Yes.

Q Did you hear Mr. Chiappe testify that the blindfold slipped down during, at one point of his pre-plane incarceration and he observed an American?

A I heard him telling that.

Q Did he ever tell you during the time you were interviewing him on May 27th, 1976, anything like that?

A He did not.

Q Mr. Freid, did you further specifically ask Mr. Chiappe whether he heard English spoken during the time he was incarcerated and before he was expelled to the United States from Argentina?

A I asked him repeatedly if he heard English before he was taken on that airplane to the United States.

Q What was Mr. Chiappe's answer?

A He at no time heard any English spoken.

Q Mr. Freid, did you have occasion during the course of that interview to make notes?

A I made several notes.

Q Were those notes made contemporaneously with the questions and answers that you were asking and Mr. Chiappe was answering?

A That is correct.

MR. SCHLAM: I would like to have three pages of notes marked as Government Exhibit 2 for Identification in this Hearing.

THE CLERK: Whereupon, Government Exhibit 2 was received and marked for Identification.

BY MR. SCHLAM:

Q Mr. Freid, please take a look at what has been marked as Government Exhibit 2 and tell us if you recognize it?

A Yes, I do.

Q What do you recognize it to be?

A These are the handwritten notes, three pages

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taken during the time I was with Mr. Chiappe on May 27th, 1976.

MR. SCHLAM: Your Honor, I am going to offer Exhibit 2 in evidence.

MR. GALLINA: I would like to see what they are.

THE COURT: Show it to Mr. Gallina.

MR. GALLINA: I object to it your Honor, on the grounds that it is self-serving.

THE COURT: Well, it is not a business document and it can't be an official document. It's just a note. I must sustain the objection to it.

BY MR. SCHLAM:

Q Mr. Freid, do you recall Mr. Chiappe telling you during the course of that interview that the first time he heard American spoken was on the airplane coming back to the United States?

MR. GALLINA: Objection.

THE COURT: Overruled.

MR. GALLINA: Already asked and answered.

THE COURT: I'll allow it.

A Yes. That is precisely what he said.

MR. SCHLAM: Your Honor, I think that

concludes the direct.

THE COURT: All right, Mr. Gallina. You may examine.

CROSS-EXAMINATION

BY MR. GALLINA:

Q Mr. Freid, did you make any memorandum, do you have in your possession any memorandum or any documents which relate to these various meetings that you have testified to here today, you have testified about a meeting on the 28th of April and you testified about a meeting on the 29th of April; do you have any notes, memorandum of these meetings?

A I have memorandum that I wrote when I came back covering my trip to Argentina.

THE COURT: Off the record.

(Whereupon, the following took place off the record.)

THE CLERK: A two-page document dated May 5th, 1976 marked Government Exhibit 3 for Identification in the Hearing.

MR. GALLINA: May I have a moment to read it, your Honor?

THE COURT: Oh, about a moment.

MR. GALLINA: It's a two-page typewritten memorandum.

THE COURT: I am trying to complete this today. It is almost twenty of five or a quarter to five.

BY MR. GALLINA:

Q Are there any other documents in your possession or do you know of in existence which relates to any of these meetings you testified to? Mr. Freid, are there any notes that you made or any memorandum that you made or anything you made on your behalf or had cause to be made?

A Concerning which meetings?

Q Concerning the meetings of the 27th, 28th, 29th of April or the 29th, 27th of May; is this the only document which you have, the only memorandum that you made or caused to be made concerning your meeting in Argentina in April of 1976 on this subject?

A No.

Q In other of these other documents, did you make mention of any of these instructions or these suggestions or recommendations as to non-violence, non-mistreatment or lack of mistreatment or bad treatment?

A That is correct if you look, you will see I did.

Q Did you at any time state anywhere in this document or right now, that the instructions that you say that you gave to these various individuals on these various dates?

A That's only a document that was prepared by me when I came back. It's the only document I have written.

Q Have you had an opportunity to review or examine any other memorandum or documents prepared which relate to these same meetings which may deal with the same subject matter which you testified here to today in preparing for testifying here today or in preparing of this case at all?

A Well, there is a teletype which may have indicated I was down there. I don't recall whether there was.

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Q Do you know with reference to the meeting with Ambassador Hill had -- well, did you have an opportunity to review any State Department communication or writings or documents which you had to in connection with these meetings or having anything to do with the expulsion of Mr. Chiappe which you related here in the testimony you gave here today?

A The only document that I am aware of that relates to my particular meeting with the agents in Argentina and my instructions in discussions with them to

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characterize, denote the problem would be the memorandum you have that is referred to on the first page.

Q There was no communication between yourself and Mr. Fields?

A Mr. Fields was present during any communication.

Q Has anyone read any documents including Mr. Fields or any member of the State Department?

A None that I am aware of.

Q So, you are telling us today to your knowledge you haven't seen any other documents in the course of your preparation for this case, any other documents prepared by any other persons having to do with these meetings?

A No. With the exception of the teletype, this is the only document I am aware of.

Q You testified to a meeting with Mr. Fields and Ambassador Hill and the Minister of the Interior; is that correct?

A The question was asked and sustained. There was an objection made and I was never permitted to answer it.

Q Did you see any communication, did you see any writing, by that I mean any memorandum having to do with that meeting, that you read in preparation for this case?

MR. SCHLAM: Objection, your Honor.

THE COURT: I'll allow it.

A If the question refers to the meeting between Ambassador Hill and the Minister of the Interior, yes, that teletype discusses the substance of the meeting.

MR. GALLINA: Could I see that, your Honor?

THE COURT: Do you have the teletype?

MR. GALLINA: I would to see the document, I want to see what it says.

THE COURT: I am asking that question.

A Basically what it was, was that the Argentine government would be willing to or would consider expulsion of drug traffickers for prosecution in the United States. That they understood these people were under indictment and were currently under charges in that country and the Minister of the Interior would sign the expulsion order but that they wanted to get approval of the full Cabinet and present it before he was going to take the responsibility on himself. He asked Ambassador Hill and Agent Tryan and Mr. Fields to return that following week after he presented the problem of the expulsion to the full Cabinet.

THE COURT: Now you can continue your cross-examination.

BY MR. GALLINA:

Q On the interview on the 27th of May with Mr. Chiappe, he stated, did he not that he was blindfolded during the total of the five days who was in the farmhouse?

A He said that he was blindfolded from the time he was arrested until the time he boarded the airplane to come to the United States.

Q Nevertheless, you specifically asked him if he saw any Americans?

A I certainly did.

Q Even though he was blindfolded?

A I certainly did.

Q You testified here today that you instructed both members of the Drug Enforcement Administration and asked the State Department to instruct the Argentineans to have any Americans participate in any matters having to do with the expulsion until he's received, until Mr. Chiappe was received by Americans?

A I don't understand the question.

Q Is it your testimony that you instructed both the D.E.A. and representatives in Argentina and the Ambassador to Argentina that they should make sure that no American participated in the arrest and in the apprehension and custody conditions of Mr. Chiappe until he was turned

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over to the Americans appropriately?

A I didn't testify to that but that is correct. I did instruct them that they should have nothing to do with the arrest. I told them that Americans should have nothing to do in the apprehension and custody of those fugitives until they were turned over to the Americans to be brought to the United States.

Q Were you present in Argentina during the period of time Mr. Chiappe was in custody from the 21st of May to the 27th of May?

A No, I returned to the United States, I think it was on Sunday, May 2nd or 3rd. I don't recall the exact date.

Q Now, you were not there at any other time during that month, during May?

A No.

Q Do you know if Agent Corcoran was present at the site where Mr. Chiappe was held or the site where he was held in custody by whoever arrested him?

A I have no knowledge where he was held or did any other American agent.

Q Do you have information as to the identity or identities of the person or persons who arrested Mr. Chiappe or held him in custody?

A I do not.

Q Do you have that information available to you?

A I do not know.

Q You don't know or you don't have the information here?

MR. SCHLAM: Objection.

MR. GALLINA: If that information is available as to who arrested Mr. Chiappe --

THE COURT: Could you find out?

A I assume the American authorities in Argentina could. Which member of the Argentine police arrested him.

Q Now, you say the conversation that you had with Mr. Chiappe lasted for 40 to 50 minutes?

A Yes. That is correct. I was interviewing him.

Q What else did you discuss with Mr. Chiappe besides these two questions?

A I told him what he was charged with. I repeated his rights and he told me his only incarceration involved incarceration on one case in Argentina and he wasn't talking about that. I was more interested to find out what occurred in Argentina surrounding the circumstances of what occurred and then he vividly described the apprehension on the street in the village. I don't recall the name of it.

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Q Was it at that point that you observed the wounds about his body, did you not?

A Yes, I did. In fact, he showed them to me. It was precisely at that time he described how they were, in fact, that is in my notes.

MR. GALLINA: May I have one moment, your Honor, with my client?

THE COURT: Yes.

BY MR. GALLINA:

Q What was your understanding as to the actual seizure of Mr. Chiappe in Argentina, the arrest of Mr. Chiappe?

A What was my understanding?

MR. SCHLAM: Objection.

THE COURT: The objection is sustained.

BY MR. GALLINA:

Q Did you have a discussion with anyone concerning Mr. Chiappe's arrest and mode of arrest?

A You mean in Argentina?

Q Yes.

A I had no discussion with anyone in Argentina.

Q Did you have any discussion with any member of the D.E.A. or the State Department or official of Argentina as to how the arrest of Mr. Chiappe or the mode of arrest of

Mr. Chiappe would be conducted by the Argentine police; who was to do it?

A The only thing I discussed was that the Americans were willing to prosecute Mr. Chiappe, Mr. Russo and Mr. Samiento if the Argentineans were willing to expel them this country.

THE COURT: What Mr. Gallina is really asking you is whether you told the D.E.A. agents, how and when to arrest Mr. Chiappe?

THE WITNESS: No, no I did not. When or where he would be arrested was never discussed.

BY MR. GALLINA:

Q Did you carry any instructions, any written instructions or any instructions or convey any instructions from our government to the Argentine government while you were down there which directed the arrest or method of arrest or mode of custody?

A No.

Q Did you carry any communication or instruction concerning any promise or favors or items of value which were to be given for these arrests?

A No.

Q Was there any Argentine officer or Argentine agent of any branch of that government who was assigned to any liason work with you to execute that expulsion?

A There was not.

Q You knew at the time, you were aware at the time you were having discussion with these members of the D.E.A. and the State Department personnel that expulsion to the United States would be in violation of Argentine law?

MR. SCHLAM: Objection, your Honor.

THE COURT: The objection is sustained.

MR. GALLINA: I have no further questions.

MR. SCHLAM: I have no questions, your Honor.

THE COURT: You may step down.

Is there any other evidence in this Hearing?

MR. GALLINA: Your Honor, we are going to serve two subpoenas and intend to serve a subpoena on the State Department and ask them to produce communications having to do with the article.

THE COURT: You better have that done before Mr. Chiappe's sentence. I do not intend to delay the sentence in order to plea the Hearing.

MR. GALLINA: I'll do that Monday or Tuesday at the lastest.

MR. SCHLAM: Only one thing further. We might produce Agent Columbo.

THE COURT: Mr. Gallina, when will you make the subpoena returnable?

MR. GALLINA: I'll make it returnable for next Friday, your Honor.

THE COURT: All right, next Friday, 10 o'clock.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW

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UNITED STATES OF AMERICA, : 73 CR 164

- against -

FRANCOIS CHIAPPE,

Defendant.

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United States Courthouse
Brooklyn, New York

January 14, 1977
10:00 o'clock A.M.

Before:

HONORABLE JACOB MISHLER, U.S.D.J.

Paul Klimaszewski
Acting Court Reporter

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Appearances:

D. G. TRAGER, ESQ.,
United States Attorney
for the Eastern District of New York

BY: PETER SCHLAM, ESQ.
Assistant U.S. Attorney

GINO GALLINA, ESQ.,
Attorney for Defendant.

JURIS CEDARBAUMS, ESQ.,
Of Counsel

THE COURT: Are you ready on the U.S. against Chiappe?

MR. SCHLAM: We are, your Honor, with one exception, and that is Mrs. Cancey is not going to be in today and our Mrs. Harary is supposed to come up as soon as she gets here, but she hasn't arrived as yet. So, that's the only thing holding it up.

THE COURT: Have you seen Mr. Gallina this morning?

MR. SCHLAM: I have not, Judge, nor incidentally have I heard in connection with any of the subpoenas; I haven't heard anything.

THE COURT: I might say that his assistant, Mr. --- I forget the name.

MR. SCHLAM: Cedarbaum.

THE COURT: Yes, Cedarbaum's called my office yesterday and wanted an opinion as to whether I was to sustain a claim of executive privilege.

MR. CEDARBAUM: I beg your pardon, your Honor?

THE COURT: Yes, you called my office and asked my clerk whether I would sustain a claim of executive privilege.

MR. CEDARBAUM: I'll tell you what the problem is.

THE COURT: Did you do that?

MR. CEDARBAUMS: Yes, I discussed it with him, and I would --

THE COURT: Well, I was telling Mr. Schlam that you did, and I told my clerk to tell Mr. Cedarbaums that it is not conforming and if the parties are served and they assert the claim then I'll rule on it, and I suggested to Mr. Gallina that he make certain to pay the subpoenas--

MR. CEDARBAUMS: Your Honor, let me tell you what happened on that. The reason I called yourclerk was to, perhaps, avert a problem which in fact happened.

In the past month I called Mr. Edward Smith who is the attorney for Newsweek Magazine, he was the same attorney that handled the subpoenas in the Orsini matter. I told him I was considering filing a subpoena for Mr. Marrow and Mr. Axsel, and, at that time he informed me, he said, "Well, since you have done me the courtesy of calling ahead of time, let me do the following." He said to me the following, "Don't bother to subpoena Mr. Axsel, Mr. Axsel is a sports writer whose only role in the writing of this article was to put it in nice language, he said, "He's a good writer, so he was brought into write it. The only person having

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the information you want is Mr. Marrow."

He said that, he also informed me that, "If you subpoena Mr. Marrow, I am telling you right now we'll fight the subpoena and the subpoena's granting. We'll go to jail rather than tell."

I told him that I'd call him back if I decided to subpoena him. I had about five conversations with him since Monday, and Wednesday morning I called him again. I told him that I was, in fact, going to send the subpoena out and he said, "All right, do what you have to do." He said, at that time he told me Mr. Smith, that if I go ahead and serve the subpoena he said and I quote, "That I will personally get Mr. Gallina for harassment and abuse of process." I told him at that time that I am doing what I have to do to preserve my client's rights, and I am sure he will do whatever he has to do to protect his rights. At that time I called the process service and gave them the necessary check, the subpoena, copies as a matter of fact which I gave him two different subpoenas, one for the New York Office and one for the Washington Office.

In the Monday conversation with Mr. Smith, he led me to believe that Mr. Marrow was no longer in Washington, but in New York. To avoid any problems

I gave subpoenas, one for Washington and one for New York. About a half hour after the process service left, it was about 2:15 in the afternoon, Mr. Smith again called me up.

At that time he told me, he said, "There's something I didn't tell you throughout these conversations that at this time I feel obligated to tell you. The fact is that Mr. Marrow hasn't been working for us for the past month."

At that time I was surprised, naturally, because he had notindicated anything of the sort of the five prior conversations and, when I asked him where Mr. Marrow was he flatly said, "I'm not going to talk to you anymore," and he hung up the phone on me. So, the process service wasnot able to serve Mr. Marrow at the Newsweek's Office. He, in fact, apparently saw a letter of resignation that Mr. Marrow had sent and that letter of resignation did not have any forwarding address on it, and the attorney would not tell me where I could find Mr. Marrow, so that is the status of the subpoena.

THE COURT: Is that the only witness you intended to bring in?

MR. CEDARBAUMS: No, Judge, I have another motion which I prepared, that is a motion in which I basically ask quite extensive witnesses, on page one of the affidavit I prepared, I specifically laid out what Iam looking for in terms of witnesses at this hearing.

And, in the enclosed memorandum of law, I discussed the reasons why these particular witnesses are needed. As you see, this is a very broad type of request.

THE COURT: Yes, I see that.

MR. CEDARBAUMS: Ok, the reasons basically if I can, Judge, just summarize my part without having, you read it at this time, your Honor has thus far ruled that the various articles that have been printed about either this case or other cases about the DEA are irrelevant. I have just begun to scratch the surface in terms of collecting these types of articles. I have enclosed another article which I found in the January issue of Penthouse.

THECOURT: How long has this motion to dismiss on the grounds of lack of jurisdiction been pending?

MR. CEDARBAUMS: I believe the original papers were filed by Mr. Gallina on October 5th, of 1976,

THE COURT: And you have just scratched the surface?

MR. CEDARBAUMS: Judge, I can justtell you --

THE COURT: Incidentally, Mr. Gallina while he was at this hearing before this trial, I told him I wouldn't do that. Can you imagine if I waited until Mr. Gallina got ready for the hearing in order to try the case?

BY MR. CEDARBAUMS: Judge, I am not in a position to answer for anybody else, but myself.

THE COURT: Mr. Gallina is the attorney of record.

MR. CEDARBAUMS: That's correct.

THE COURT: Some one has to answer for Mr. Gallina.

BY MR. CEDARBAUMS: That's correct. What happened in effect was I came to his office approximately the middle of November, and first work I did on this case was a couple of points of research during the pendancy of the trial, and after the case was completed I started doing some extensive research and collecting materials in terms of the motion that I filed last week, and this week.

My understanding from Mr. Chiappe, I have spent many hours talking to him in the MCC, is that he has made specific requests that I handle his matter from here on.

His basic --

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THE COURT: Mr. Gallina is the attorney of record; if you want to file a substitute, you can do that. As far as Mr. Gallina --

MR. CEDARBAUMS: I'm associated with Mr. Gallina.

THE COURT: I know that, but you can't tell me to absolve Mr. Gallina because Mr. Chiappe wants you to handle it.

MR. CEDARBAUMS: I'm not asking you to absolve anyone, I'm not in a position to ask that.

The reason basically Mr. Chiappe said he wanted another attorney to handle it for him, first of all, he said that he was distressed at what goes on in Court between Mr. Gallina and yourself, in terms of various conflicts. He feels, and perhaps rightly so, that he is the loser in the personality struggle.

THE COURT: That's another point on appeal, and I recognize that Mr. Cedarbaums you probably told him that right, you told Mr. Chiappe.

MR. CEDARBAUMS: No, Judge, I didn't tell him, he told me that. I didn't ask to be his attorney, he did.

THE COURT: He sure is courtwise then, isn't he, for a layman to think of that.

MR. CEDARBAUMS: That's a fact, Judge.

THE COURT: Go ahead.

MR. CEDARBAUMS: The second reason apparently why he wanted me to handle the case is becausehe felt I had put sufficient time and discussions in with him on the facts of the case which he felt he did not get from Mr. Gallina. Those are the reasons he gave me.

MR. SCHLAM: Your Honor, may I make a brief statement?

THE COURT: Did you see this?

MR. SCHLAM: Yes, and I'd like to make a brief statement with respect to the motion.

First of all, you know, as far as we're concerned, we believe that there should come a time when a case ends and this case has been going on now, Mr. Chiappe was returned from Argentina, May 27, 1976.

Mr. Chiappe made a motion for a severance based upon an allegation that he had a severe and serious form of Cancer. Based upon that representation, the Government went along with it, we believed based upon the representation that was made, this was a substantial question. Mr. Chiappe was severed from the case.

Mr. Chiappe comes back from Springfield, Missouri, and his medical condition is apparently far less serious, if it's serious at all, than was originally indicated to the Court and to the United States Attorney. The trial date then was set by the Court for the convenience of both defendants and their counsel, for November 19 of 76. Prior to that date, Mr. Gallina, knowing full well that he was going to make a claim that there was no jurisdiction to try Mr. Chiappe, filed a formal motion and, furthermore, asked the Court to order a deposition, depositions I might say because there were several of them to be taken in Argentina.

In order in part to substantially aid the question, the Court ordered the depositions of the Government because we had no choice, we went to Argentina in order to comply with the order of the Court and depositions were taken.

Mr. Chiappe then went to trial. The trial lasted approximately three weeks and thereafter the Court advised Mr. Gallina again that if he were to press, if he wished to press his so-called Toscanina motion he should be prepared to proceed on January the 7th, 1977. This was done approximately twoor three weeks, as I recall prior to the date that the Court set for the hearing on this motion.

On January the 7th, we had comeinto Court, the Government is ready, Mr. Gallina allegedly is ready and we proceed with the hearing. At that time for the first time, Mr. Gallina startstalking in terms of subpoenaing Newsweek Reporters, and I think at that time --

THE COURT: Now, Penthouse.

MR. SCHLAM: Now it's getting to Penthouse. The first one was Newsweek. Now we're talking about subpoeaning the United States Ambassadorto Argentina, the Administrator of the Drug Enforcement Administration, we're being asked to produce all records from approximately three different branches of the Government, well, three different branches of the executive department for a claim which, from what I've been able to hear so far, is without any substance whatsoever.

And thepoint I am wishing to make, your Honor, is the following; this motionto me, if the term "Fishing Expedition", or whatever applied to any proceeding in Court, I would suggest it applies to this particular motion, without any specifics, without any basis, the Government is being asked to collect records, to produce people who hold important positions in the Government, disrupting their jobs, disrupting the

Government's position to function and for what? On what basis?

And, I suggest, yourHonor, that is the reason why we vigorously oppose this motion, and if Mr. Cedarbaums or Mr. Gallina or anybody who represents Mr. Chiappe is not prepared to produceevidence to date, we suggest that this hearing be closed and the hearing be decided on the basis of the evidence produced so far.

THE COURT: Is Mr. Chiappe here?

THE CLERK: Yes, your Honor, but there is no interpretor.

MR. CEDARBAUMS: I would like to respond, very briefly to that. There is no question this is a fishing expedition, and the reason it's a fishing expedition, is because of thereasons I give in the memorandum.

Mr. Chiappe, I argue, is not in a position today because of his physical condition, that he was deprived of his senses other than hearing.

Who it was, in fact that mistreated him, or engaged him in this torture, the only people that --

THE COURT: What you are saying now is surprising. I had always believed he wastortured by the Argentin Police, but some one took the stand and testified that what happened was when he was arrested, he thought he was being arrested by Guerillas and put up a fight, and that's how he got the beating.

I was even willing to concede his version of whathappened in Argentina with the Police.

MR. CEDARBAUMS: Thus, through eight days of or whatever he put in there, after that torture and I don't know what you want to call it, but if you were straight jacketed and blindfolded, and deficated and urinated in your pants, and deprived of both food and water--

THE COURT: Mr. Cedarbaums, I don't know how long you have been at the bar and I don't know how long you say you have been with Mr. Gallina, did you say since November?

MR. CEDARBAUMS: Yes.

THE COURT: But, I suggest that you investigat- statements before you make them and see if thereis any substance to them.

When you say that he was straight jacketed and defecated in his pants, yougot that story from Mr. Chiappe; I think you --

MR. CEDARBAUMS: That's the only source.

THE COURT: I think you should preface that by saying, instead of this is whathappened, say

Mr. Chiappe says this is what happened.

MR. CEDARBAUMS: Correct, Judge.

THE COURT: I think you'll save yourself a lot of problems, you will save yourself many of the problems Mr. Gallina has presently had with this Court.

MR. CEDARBAUMS: I can only say what the evidence in this hearing has been.

THE COURT: Have you investigated this, personally?

MR. CEDARBAUMS: Personally? How can I investigate it?

THE COURT: I am asking.

MR. CEDARBAUMS: I can investigate as muchas I can as a lawyer, working from an office.

THE COURT: What do you understand Mr. Chiappe's physicalcondition to be in Argentina, with reference to his throat?

MR. CEDARBAUMS: The only thing I knew about the throat is what I had seen in terms of various documents from Argentin doctors that were, apparently, given to Mr. Schlam.

THE COURT: What does it say?

MR. CEDARBAUMS: I believe that they say that he has some form of Cancerous condition of the vocal cords.

THE COURT: There is no question about that, right?

MR. CEDARBAUMS: That's only a doctor, Judge, I'm not the examining commenting doctor. I saw in the file documents which is, apparently certified by a physician in Argentina, it was in Spanish and there was a translation attached. I can only say what I read there.

THE COURT: Is Mr. Gallina going to be in Court today?

MR. CEDARBAUMS: No, he is not.

THE COURT: Where is he?

MR. CEDARBAUMS: I have no idea.

THE COURT: Ask Mrs. May to call the office and find out where Mr. Gallina is.

MR. CEDARBAUMS: He called me last night at home and said that because of what his client told him, that he wants me to handle this matter.

THE COURT: I might want him here, his credibility isin issue, too.

MR. CEDARBAUMS: I understand, your Honor.

THE COURT: Does the Government have the other witnesses?

MR. SCHLAM: Your Honor, we have Agent Palombo who was indicated as the person who Mr. Chiappe claimed was present when he allegedly was mistreated in Argentina. We'd like to call him to straighten that out.

THE COURT: I want Agent Palombo to testify but before that, I want to complete this or at least take a step in that Marino matter.

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MR. CEDERBAUMS: Judge, do you want to hear any further arguments?

THE COURT: No.

MR. CEDERBAUMS: It's all in my papers.

THE COURT: I know it is, I'll read it.

MR. CEDERBAUMS: I am sorry, Judge, I'd like to make a record of the following: As far as investigation over allegations over DEA abuse, I was on the phone with the legal assistant for -- representing Robert Stark of California. She told me that Mr. Stark's office had been investigating matters of DEA abuse in Mexico, which is the subject of course of the article I attached from Axsel's superior. She says there actually have been Congressional hearings whether these are public or not, I don't recall.

She said that they have been investigating approximately a hundred cases of such abuse in Mexico. I asked her about any incident in South America and she replied they did have details of three incidents in South America, one in Peru and two in Columbia. She told me that she would send me a transcript of the various proceedings which have been held in Congress in the matter that Representative Stark is investigating.

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That conversation was yesterday. Other than that, I have been in touch with the author of the Penthouse, Mr. Scaduto; he has been cooperative to the extent that he has agreed to talk to me, agreed to search his files for whatever evidence he has and will talk to me Monday and tell me what he has in his files that may have relevance to our claim.

THE COURT: Is that it, completely?

MR. CEDERBAUMS: Yes, Judge.

THE COURT: All right. We will have a short recess of this.

(A short recess was held.)

THE COURT: Is Mr. Chiappe here?

THE CLERK: Yes.

(Mr. Chiappe is brought into the courtroom.)

THE COURT: Does he need an interpreter?

MR. SCHLAM: We have him here, your Honor.

THE COURT: Okay, Mr. Boyne you understand you are to interpret this to Mr. Chiappe?

MR. BOYNE: Yes.

THE COURT: Will you call your witness, Mr. Palombo.

MR. SCHLAM: Your Honor, I will; Agent Robert Palombo.

ROBERT PALOMBO, having first been duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: Please state your name and spell it.

THE WITNESS: Robert Palombo, P-a-l-o-m-b-o.

DIRECT EXAMINATION

BY MR. SCHLAM:

Q Whom do you work for?

A The Drug Enforcement Agency.

Q In what capacity?

A Special Agent.

Q For how long?

A Approximately seven years.

Q Agent Palombo, do you know the defendant, Francois Chiappe?

A Yes, I do.

Q Would you point him out, please?

A He is sitting at the defense table, between the interpreter and Mr. Cederbaums, wearing a black coat and green shirt.

THE COURT: The record will indicate the witness pointed to the defendant Francois Chiappe.

Q Agent Palombo, can you tell us please, when for the first time you saw Francois Chiappe?

A Well, I've seen photographs of him.

Q Personally?

A Personally, May 27th about 12:00 midnight Argentina time in the Buenos Aires Airport.

Q May 27th, 1976?

A '76, yes.

Q Now, Agent Palombo, where was it that you saw him for the first time?

A Aboard a Braniff airplane.

Q Prior to that, when did you arrive in Argentina on the occasion that you saw Mr. Chiappe?

A At approximately 9:30 or 10:00 o'clock, on May 26, 1976.

Q And that's 9:30 or 10:00 o'clock in the evening?

A In the evening, yes.

Q Had you been to Argentina at any time in your life prior to that time?

A No.

Q How long did you remain in Argentina on the occasion in May of 1976?

A Approximately two and a half hours.

Q And this was during what day, approximately what were the two and a half hours that you were in Argentina?

A Of the late evening of May 26th into the early morning of May 27th, 1976.

Q And thereafter, have you ever been Argentina in your life?

A No, I have not.

Q Agent Palombo, when you returned to the United States after this trip, did you have occasion to see Mr. Chiappe again?

A Yes, on various occasions, at his arraignment and other proceedings where DEA personnel would escort Mr. Chiappe to the courtroom.

Q Had you recalled seeing Mr. Chiappe in the office of the U.S. Attorney at any time after he came back to the United States?

A Yes, I did.

Q Can you tell us where was it in the U.S. Attorney's office that you had occasion to see Mr. Chiappe?

A Well, I can't give the exact date. It was, of course, after he was arrested and returned to the United States; it was in the conference room on the fifth floor of the U.S. Attorney's office.

Q Fifth floor of this building?

A Yes. I assisted Joseph Corcoran in a video taping, of putting a tape and machinery together for

Mr. Schiappe, and Mr. Gallina's perusal.

Q Now on this occasion, was any other agent with you?

A Yes, Joseph Corcoran.

Q And other than you and Joseph Corcoran, were any other DEA agents present on that occasion?

A No.

MR. SCHLAM: Your Honor, I have nothing further.

THE COURT: All right, Mr. Cederbaums.

Now, Mr. ~~Schlam~~ Chiappe I understand that you want Mr. Cederbaums to represent you instead of Mr. Gallina?

THE WITNESS: Yes, your Honor.

THE COURT: You asked for that?

THE WITNESS: Yes, your Honor.

MR. SCHLAM: Your Honor, because of Mr. Chiappe's testimony last week, I'd like the record to show that Agent Palombo's hair is brownish blonde and that he has a mustache.

THE COURT: Fine.

CROSS-EXAMINATION

BY MR. CEDERBAUMS:

Q Agent Palombo, do you have any memoranda or notes that you took regarding this incident?

A No, I have not.

Q Did you prepare any part of your final report on this case?

A No, it wasn't my -- Mr. Chiappe wasn't my --

MR. SCHLAM: Excuse me, Mr. Cederbaums, the interpreter can't hear you.

MR. CEDERBAUMS: Okay. What I'm asking for, Judge, is there any memoranda that corroborated his report, and notes about what he testified.

A I did not prepare any memoranda relative to Mr. Chiappe; he wasn't my responsibility.

Q Did you have any specific orders that had been given to you by the District Attorney's office or your superiors about your trip to Argentina on May 26th?

A It was purely an escort trip; there was no specific order. I was responsible for one of the defendants that was returning to the United States.

Q How many defendants were you supposed to take back to the United States?

A There were three altogether but I was only responsible for one.

Q And when you say they're three, were there three that you brought back or three that you were supposed to get?

A Three that we brought back.

Q How many were you supposed to get?

A Three.

MR. SCHLAM: I'll object to that, your Honor.

THE COURT: Could I have that read back please?

(The reporter read back the requested question.)

THE COURT: Objection sustained.

MR. CEDERBAUMS: If I may make a record, your Honor, why I asked that question; I have information and believe there was a fourth person abducted and killed.

THE COURT: Who was the person abducted and killed, what's the grounds for you information and belief?

MR. CEDERBAUMS: The person who was killed, the basis for that was a conversation I have had with Mr. Chiaffe.

THE COURT: And where did he get his information from?

MR. CEDERBAUMS: He was apparently told this by the other people that came back with him.

THE COURT: Will you step down for a moment.

Mr. Chiappe, take the witness stand.

You have been previously sworn in this hearing and you are still under oath; do you understand Mr. Chiappe that if you lie under oath it may very well effect the sentence that I impose on the charge on which you were convicted.

Do you understand that?

THE WITNESS: Yes.

THE COURT: Please be seated.

(Mr. Palombo steps down from the stand.)

(Mr. Chiappe takes the stand.)

THE COURT: Go ahead, Mr. Cederbaums. I want him to testify, under oath, on the matter you said he told you about.

MR. CEDERBAUMS: You want me to examine him?

THE COURT: Yes, I want you to question him.

EXAMINATION

BY MR. CEDERBAUMS:

Q Mr. Chiappe, at the time that you were held incommunicado in Argentina prior to your return to the United States, how many people were with you, how many others abducted --

MR. SCHLAM: I object to the form of that question.

THE COURT: I'll allow it.

A Four, we were four I believe.

THE COURT: I will permit Mr. Chiappe to tell the full story and that you can cross-examine him on it.

Q You said that there were four; is that correct?

A Four with me.

Q Do you of your own knowledge know who the four were?

A We arrived three here.

Q Do you know who the three other persons besides yourself were?

A One person was Yolanda Samiento, Miguel Russo the second one and the other person I didn't know.

Q Do you know --

THE COURT: How do you know there was a fourth person?

THE WITNESS: Because I heard him talking, that person always asked permission to go to the bathroom.

THE COURT: Did they give him permission to go to the bathroom?

THE WITNESS: No. Some other people could testify, Miguel Russo knew.

THE COURT: We are asking you to testify.

Go ahead, Mr. Cederbaums.

Q Do you know what happened to the fourth person?

A I was told that he never went back home.

Q Were you told why he never went back home?

A I was told he was killed.

THE COURT: Who told you that?

THE WITNESS: Miguel Russo told it to me.

THE COURT: When did he tell it to you?

THE WITNESS: When we were here.

THE COURT: When?

THE WITNESS: They knew him.

THE COURT: When?

THE WITNESS: About two, two and a half months after we arrived here, when I went to the hospital.

THE COURT: Was that the first time he told it to you?

THE WITNESS: More or less. Yolanda Samiento also told me.

THE COURT: I want the very first time that miguel Russo told you that the fourth person was killed, the very first time.

THE WITNESS: As I told you, two and two and a half months after we arrived here.

THE COURT: Where were you at the time?

THE WITNESS: In jail.

THE COURT: Who else was present?

THE WITNESS: No, just Miguel Russo.

THE COURT: Did you ever tell this to Mr. Gallina?

THE WITNESS: I told Gallina that Miguel Russo had told me that that person had not come back home.

THE COURT: When did you tell it to Mr. Gallina?

THE WITNESS: About the same day when Russo told it to me.

THE COURT: When you told it to Mr. Gallina, did Mr. Gallina make a note of it?

THE WITNESS: No.

THE COURT: Did you tell it to anybody else?

THE WITNESS: No, only to Gallina.

THE COURT: Now, when did you tell it to Mr. Cederbaums?

THE WITNESS: Who is he?

THE COURT: That's your lawyer.

THE WITNESS: He was with Mr. Gallina.

THE COURT: Was that at the jail at the Metropolitan Correctional Center?

THE WITNESS: Yes sir.

THE COURT: Go ahead, Mr. Cederbaums.

MR. CEDERBAUMS: Suggest, if you recall, I believe Mr. Gallina last week in his examination of some of the witnesses, did ask questions relative to the death of the fourth person and those objections were sustained. The reason I'm asking these questions --

THE COURT: I still think it's immaterial.

MR. CEDERBAUMS: Just let me put on the record --

THE COURT: But I want to go into this matter and determine whether Mr. Chiappe is telling the truth.

MR. CEDERBAUMS: I understand, sir. The reason I'm into this line of questioning --

THE COURT: Have you finished asking questions?

MR. CEDERBAUMS: I have no further questions.

THE COURT: Mr. Schlam?

BY MR. SCHLAM:

Q Mr. Chiappe, you said you first heard this from Mr. Russo when only you and he were present; correct?

A The first who told me about it is Yolanda, who told me she had heard the shots, but then Russo confirmed to me that the man was killed.

Q Wait a second. Are you saying that Mr. Samiento told it to you for the first time; is that your statement now?

A Yes.

Q And where was this?

A In the jail.

Q How soon after you were returned, approximately, did she tell you this for the first time?

A It wasn't long that they were here now.

Q Well, a week, two weeks, a month?

A Two weeks.

Q Approximately two weeks?

A Perhaps two weeks.

Q When she told you this, was anyone other than you and she present?

A No, only -- no, she was passing by when she told me that. Nobody else was there.

Q She was passing by where?

A She was in an office and we were passing by to get dressed and she was there and she saw me.

Q Wait a second; what are you talking about. the Metropolitan Correction Center?

A Yes.

Q Now, what floor did you see her on?

A Third floor.

Q What were you doing?

A I was coming from changing my clothes.

Q Where were you going?

A I was coming from here.

Q You were coming back to the MCC?

A Yes.

Q What office was she in?

A There is an office, the officer can tell you. There is an office where the woman comes in. They put her there.

THE COURT: Is that the first time you saw her since you came to this country?

THE WITNESS: No, it wasn't the first time because we came together. So, I saw her when we were coming.

THE COURT: But nothing was said to you on the plane coming over, right?

THE WITNESS: No.

BY MR. SCHLAM:

Q What did she say to you?

A She told me that the other one was killed.

Q What about the other man; the whole thing she told you, she told you the other man was killed?

A Yes.

Q That's exactly in substance the words that she used?

A Yes.

Q What did you understand her to mean by that?

A That the fourth man --

Q This is before you spoke to Mr. Russo, isn't it?

A I don't think -- I'm confused now. Yolanda was the first who told it to me and Russo confirmed the same thing to me.

Q Yolanda Samiento said the other man was killed. correct?

A Yes.

THE COURT: Excuse me. Didn't you know the other man by any name, first name, knickname?

THE WITNESS: Russo told me when we arrived here that the name of the man is Armando; I don't know him.

THE COURT: Now, when you were with Armando, how long were you with him?

THE WITNESS: Always.

THE COURT: Didn't you ever call him, 'Armando"?

THE WITNESS: No.

THE COURT: Did he ever call you, "Francois"?

THE WITNESS: No.

THE COURT: Didn't he ever call Miguel Russo, 'Miguel"?

THE WITNESS: When we started to talk, or he talked with Russo, I mean they started to talk and they came and they hit us.

THE COURT: But you were together with this man for how long?

THE WITNESS: Six days, more or less.

THE COURT: Day and night, right?

THE WITNESS: Yes.

THE COURT: In the same room?

THE WITNESS: Yes.

THE COURT: You never whispered to each other, even at night?

THE WITNESS: The only thing that we would say to each other, we were going to get killed.

THE COURT: You said that?

THE WITNESS: Yes. I told you, I never though I was going to be brought in here.

THE COURT: But no one called each other by any name in that entire period; is that what you are telling us?

THE WITNESS: Miguel Russo was -- I could detect by the voice, I knew the voice and he spoke in Italian to me. Russo was just crying, I mama, mama.

THE COURT: But when he wanted to speak to Miguel Russo, you never said, "Miguel"?

THE WITNESS: No, no.

BY MR. SCHLAM:

Q As far as the Argentines were concerned, they knew what your name was, correct?

MR. CEDERBAUMS: Objection to this.

THE COURT: Overruled, I'll allow it.

A Yes.

Q They knew what Mr. Russo's name was, right?

A Right.

Q Did they ever ask you if you knew Mr. Russo?

A No.

Q Did they ever indicate to you Mr. Russo was in the same room with you?

A No.

Q And you recognized this voice, that was the only way you knew that he was another person that was in the room with you?

A Yes.

Q Now, when you told Mr. Cederbaums and Mr. Callina about this fourth man, and incidentally, was Miss Samiento in that room with you also?

A Yes.

Q Did you recognize her voice?

A No, I didn't know her. I didn't know.

Q Did you know that there was a woman in the room?

A Yes.

Q Did you get any indication during the time that you were there what her name was?

A No.

Q If they had wanted to address you, how would they do it, the Argentines I'm speaking about?

MR. CEDERBAUMS: Excuse me, Judge; I object to the phrasing of the question.

THE COURT: Let me hear that question back.

(The court reporter read back the requested question.)

THE COURT: Sustained as to form. When they addressed you, how did they address you?

THE WITNESS: They didn't want us to talk, they said nothing. We were there in the --

THE COURT: When they came into the room, did they say, "Chiappe, come out?"

THE WITNESS: We were tied to a bed. No.

THE COURT: Go ahead.

BY MR. SCHLAM:

Q Incidentally, Mr. Chiappe, you said that when you were talking about the American that was present, allegedly during your beating in Argentina, you described him last week; do you recall that?

A No.

Q You didn't describe him?

A They said things which I never said.

THE COURT: Just try to answer the question. If you can't answer the question, say so.

THE WITNESS: Yes, I can answer it. When I saw the man which is here, they were no like hitting me anymore at that moment.

Q Which man did you see in Argentina during the time that you were still in the custody of the Argentines?

A That man over there.

Q Which one, point him out?

MR. CEDERBAUMS: Stand up.

Q Is that him?

A Yes.

MR. SCHLAM: The witness is indicating Agent Palombo, for the record.

(Continued on next page.)

Q When did you see Agent Palumbo in Argentina?

A I am not sure whether it was the day when we departed or the day before.

Q Did you see him in the place where the Argentinians were holding you, in this farm house or so called house that you described last week?

A From that house they moved us to another place. They pushed me, they pulled down my glasses.

MR. SCHLAM: Wait a second. I move that that answer be stricken.

THE COURT: Strike it out as not responsive.

Please answer the question.

Q Mr. Chiappe, did you see Agent Palumbo in the place that the Argentinians were holding you before you were brought to the airport to be returned to the United States?

MR. CEDERBAUMS: I again object to the characterization, Argentinians were holding you.

Whoever it was holding him.

THE COURT: Overruled.

A I saw Mr. Palumbo before I was taken to the airport.

THE COURT: Did you see him at the farm house; yes or no?

THE WITNESS: I'm telling you --

THE COURT: Strike it out. Yes or no; did you see him at the farm house?

THE WITNESS: Yes.

THE COURT: Yes, O.K.

Q Were any other Americans with him at the time that you say you saw him at the farm house?

A There was three or four other people, I cannot describe them. I remember Mr. Palumbo.

Q When you heard Agent Palumbo testify this morning, did you recognize his voice as being the American voice you say you heard in Argentina when you were blindfolded?

A No, no. I recognize him, not the voice.

Q Now, this is when your blindfold slipped down, correct, and you happened to get a glimpse of a person and it was Mr. Palumbo. Is that what you are saying?

A No, they didn't pull down my blindfold.

Q Did you tell us last week that your blindfold slipped down, so you were able to see the people that were in the farm house with you; yes or no, did you say that last week?

A I said I was being pushed and at that moment they fell down and I could see.

Q And when it fell down, you were able to see Agent Palumbo; am I correct?

A Yes.

Q Now when you were being pushed, was this in the process of the time that you say you were being beaten at the farm house?

A I tell you again, no. I tell you again, they were not beating me anymore.

Q Did you see Mr. Russo when your blindfold fell off?

A No.

Q Did you see Mr. Samiento?

A No.

Q Did you see this fourth man that you claim was with you at the time?

A There were three or four people there, I cannot explain which one, and now I can tell --

THE COURT: Where were the three or four people; were they walking with Mr. Palumbo?

THE WITNESS: Yes.

THE COURT: They were with the agent together, right?

THE WITNESS: Yes.

Q Mr. Chiappe, when your blindfold slipped down, you could see the room that you were in, correct?

A Yes.

Q Describe the room for us, in term of size.

A When this blindfold fell down, maybe I could say there was four or five meters, the size of the room. The only thing I can tell you for sure that I saw Mr. Palumbo, otherwise, I wouldn't tell it.

Q Thereafter, did you look around the room when your blindfold fell off.

A No. I, all I saw was four people in front of me.

Q How long was your blindfold off.

A Maybe, three, four seconds; next time when they put it on.

Q Who was it that put it up again?

A One of the people who were there.

Q Mr. Chiappe, you stated you told Mr. Gallina about this fourth man, is that correct?

A Yes.

Q And this is after you spoke to Mrs. Samiento and Mr. Russo, correct?

A When you are in a room with four people --

Q Please, Mr. Chiappe, did you tell Mr. Gallina about this so called fourth man after you had been told about him by Mrs. Samiento and Mr. Russo; yes or no?

A Also before.

Q Did you tell Mr. Gallina about it before Mrs. Samiento first told you about it?

A That is -- before?

Q Yes.

A Yes.

Q Did you know that there was a fourth man before Mrs. Samiento told you about it?

A Yes, I heard voices.

Q You heard a voice speaking?

MR. CEDERBAUMS: Objection; he said he heard voices speaking.

THE COURT: Overruled.

THE WITNESS: Yes, I could hear -- well when one person talks, when Yolanda spoke, when Yolanda was crying, "Mama", and when the other was crying, "He wants to go to the bathroom", you could hear the people talking.

Q What was the fourth man saying?

A He wanted to go to the bathroom.

Q What did he say; "I want to go to the bathroom"?

A Yes.

Q And you assumed by that he was a prisoner; is that correct?

A You could hear --

Q Wait a second, did you assume, excuse me please, did you assume, Mr. Chiappe, because a person whom you can't see said, "I want to go to the bathroom", that meant he was a prisoner, yes or no?

MR. CEDERBAUMS: Objection, your Honor.

THE COURT: Overruled; I'll allow it.

A No, no. I tell you, I am telling you only those things they did to me, what they talked to me, I cannot tell you things you want me to tell.

Q Mr. Chiappe, what else did you hear this so called fourth man say other than, "I want to go to the bathroom"?

A I heard him saying, when the people were there, "Please, please, we're all going to die here."

Q You heard him say that?

A I heard Yolanda also saying that.

THE COURT: How much longer are you going to be?

MR. SCHLAM: I don't think it's going to be much further.

THE COURT: I have a civil case, and I don't want to keep them or suspend this and take them.

MR. SCHLAM: I can wrap this up.

Q Now, Mr. Chiappe, when you saw Mr. Gallina and Mr. Cederbaums and discussed this with them for the first time, where was it?

A In jail.

Q O.K., you were there, Mr. Gallina was there, Mr. Cederbaums was there; was anybody else there?

A And a girl.

Q Who was that: an interpreter?

A Ms. Martinez.

Q Is he the interpreter? Correct?

A Yes.

Q Did you tell Mr. Gallina about what you just told us, to the extent that this fourth man had said, "We're all going to get killed, I want to go to the bathroom", all those things; did you say that to Mr. Gallina?

A Yes.

Q Now, the final thing I want to ask you, Mr. Chiappe; you spoke to Russo about this also, correct, this fourth man? Correct?

A Yes.

Q Where was that?

A In jail.

Q And what did Russso tell you about this man?

A He told me that that fourth person never went back home, and then later on he was, he had a confirmation that that man never showed up anymore.

Q Did you ask Russo if he knew who the fourth man was; yes or no, did you ask him if he knew who he was?

A Yes.

Q What did Russo say?

A Armando, something like that.

Q Russo said he knew who he was?

A Yes.

THE COURT: Had he known him from before the time he was arrested?

THE WITNESS: No, he just said he knew him. I didn't ask him those things.

Q Did you ask him how long he had known him?

A No.

Q Did you ask him if he knew what his full name was?

A Yes. I think he told me the full name, I don't remember it.

Q Did you think that it would be important to you to be able to identify that this man had been killed by the Argentinians, in connection with the same case you were being held on?

MR. CEDERBAUMS: Objection.

THE COURT: Overruled.

A I believe so.

Q Did you tell Mr. Gallina what this man's name was, the so called fourth man's name was?

A No.

Q At no time did you tell him that?

A He didn't ask me.

Q Why did you not tell Mr. Gallina what his name was?

A I don't know that person. I don't know him.

Q Did you just tell us you thought it was important for you to be able to identify this name, important to you, and that's why you told it to Mr. Gallina; correct?

A I told you we were four people. I believe the fourth one they called Armando, where could I find him?

MR. SCHLAM: I have nothing further, your Honor.

THE COURT: Mr. Cederbaum, you can ask.

MR. CEDERBAUMS: Just a couple of questions.

REDIRECT EXAMINATION

BY MR. CEDERBAUMS

Q During the time of this six day period you were kept in custody, were you allowed to have free discussions among your fellow prisoners?

A No.

Q What would happen to you if you ever had discussions with your fellow prisoners?

MR. SCHLAM: I'm sorry, I didn't hear the question.

THE COURT: What would happen to you if you had discussions.

MR. SCHLAM: Objection.

THE COURT: I'll allow it. Go ahead, they were beaten.

A Yes. We wanted to talk once or twice and they came and hit me.

Q And during this six day period, were you continuously blindfolded and straightjacketed?

A Yes.

MR. CEDERBAUMS: I have nothing further.

THE COURT: Anything further?

MR. SCHLAM: Nothing further.

THE COURT: You may step down.

Mr. Palumbo, would you please come back.

(Agent Palumbo resumes the stand.)

EXAMINATION BY

MR. CEDERBAUMS:

Q Mr. Palumbo, from whom, Agent Palumbo, rather, from whom did you receive your orders to go to Argentina on May 26, 1976?

A Directly from my Group Supervisor, Anthony Rosciccio.

Q Were you ordered to go down to pick up four prisoners?

A No.

Q What were your orders?

A Three prisoners.

Q You were never told to pick up four prisoners?

A No, never.

Q Were you told a specific number that you were to pick up?

A Yes, and their names.

Q And all the names?

A Yes.

Q And there were just three?

A Correct.

Q Do you have any knowledge yourself, direct knowledge or from anything you may have been told from somebody else, that there was in fact a fourth person --

A I have no knowledge of it.

Q -- Whom you were to pick up?

A I have no knowledge, no.

THE COURT: Did you have any information even that you might have obtained from a third party through heresay that there was a fourth.

THE WITNESS: No.

THE COURT: Did you ever hear a rumor that a fourth prisoner was murdered?

THE WITNESS: No.

Q Now, Agent Palumbo, would you tell us please what Mr. Chiappe's physical appearance was when you first saw him?

A When he entered the aircraft --

MR. SCHLAM: Your Honor, I object to this, this is beyond the scope of this record.

THE COURT: Objection sustained. I saw him, it's on the record. I saw him the day after he returned here and we're not going through all that, and the brutality visited on Mr. Chiappe. Go ahead.

Q Was he straightjacketed when you saw him?

A Yes.

Q Was he blindfolded when you saw him?

A Yes.

Q And from whom did you receive him?

A I did not receive him. I was in the rear of the aircraft. I just merely observed him when he came on board the plane.

Q So the first you saw him was when he was on the plane?

A Yes. He was coming from the front toward the back.

THE COURT: Excuse me. When all the three prisoners were put on the plane, it was Russo, Chiappe -- with Ms. Samiento.

Were they all in the same area of the plane?

THE WITNESS: They were in the mid-body of the plane and they were strategically placed, seven or eight rows apart.

Mr. Chiappe, I believe was in the very front row, and my prisoner, Ms. Samiento, was in the rear. So, I only observed him from the rear portion of the aircraft towards the front.

THE COURT: They didn't have an opportunity to meet each other and discuss anything with each other?

THE WITNESS: No, they did not.

THE COURT: They were kept apart?

THE WITNESS: Yes.

Q Were his hands cuffed when you first saw him?

A I believe so, yes.

Q Do you know who the particular agent was that actually hadhim in custody?

A There were two; I believe one was Agent Michael Levine.

Q And the other one?

A The other one, I can't be sure of. It may have been Agent Corcoran, who was there, and there was a third Agent that spoke Spanish, Robert DeNeighbors.

Q Do you recall what the condition of Mr. Chiappe's clothes was, in terms of his cleanliness, when you first saw him?

A They were disheveled.

Q How about their smell; did they smell clean or dirty?

MR. SCHLAM: I object.

THE COURT: Overruled; I'll allow it.

A I didn't get a chance to get that close to Mr. Chiappe.

THE COURT: Did he defecate and urinate in his trousers?

THE WITNESS: Not to my knowledge. I could not smell anything from that distance.

Q Do you know when for the first time his blindfold and straightjacket were removed from him?

A It was shortly after take-off.

Q And when you say "shortly", can you give me your estimate?

A Approximately ten or fifteen minutes, I would say.

Q It could have been a period of fifteen minutes; is that correct?

A Fifteen, approximately.

Q Was there anything significant to that particular fifteen minute period after taking off that you know of?

A No, nothing eventful happened.

Q Did anyone tell you that once you were in international airspace you could then release him from --

A No one told me that, no. I was merely given instructions to sit beside my ward and make sure that they didn't, you know, move around or get out of hand until we were airborne.

Q Was your ward also in the same condition, blindfolded and straightjacketed?

A She was blindfolded, there was no straightjacket though.

Q Did you have occasion to take her blindfold off?

A Yes.

Q Was that also about fifteen minutes afterward?

A Yes, approximately.

THE COURT: Was Miguel Russo in a straightjacket?

THE WITNESS: Not to my knowledge, I don't think so.

Q Was there any reason that you kept your ward blindfolded for fifteen minutes?

A I was instructed by a supervisor on board the aircraft.

Q So there was specific instructions which dealt with your not to either unblindfold or release them from straightjackets, the prisoners, after you were fifteen minutes into the flight?

A My prisoner didn't have a straightjacket. I was told not to unblindfold her until we were airborne.

Q Do you know what happened to the straightjacket Mr. Chiappe had worn on the plane?

A No, I do not.

Q By the way, do you know by whom that airplane, the Braniff airplane was chartered?

MR. SCHLAM: I'll object to that question.

THE COURT: Overruled; if you know.

A All I know, was a Braniff airline jet, a DC8. I don't know who, from what agency chartered it, no.

Q Was that a passenger flight, to your knowledgeor not?

A It was a passenger plane, but there were no other passengers beside DEA personnel and the crew.

Q How many DEA persons were on the plane?

A I believe there were seventeen in total, approximately.

Q And the only other passengers that joined you for the return flight were the three prisoners; is that right?

A Yes.

Q There were no other civilian passengers that you know?

A No.

Q Do you have any idea of your own knowledge when the arrangements were made to send an airplane down there?

A Not specifically; it was within, we started to receive notice like I guess about ten or eleven days before, I can't be sure though.

Q Did you speak to the Chief of the Narcotics Section of the U.S. Attorney's Office, Mr. Freid, prior to your departing for Argentina?

A Not relative to this.

Q Did you speak to him?

A I spoke with him on other matters, but not on this at all. I received my instructions from our Group Supervisor.

Q Do you know that Mr. Freid had been in Argentina, I believe it was toward the end of April, or the beginning of May to focus on this particular case?

A He had been in South America, yes, and I believe Argentina was one of the countries he toured.

Q Do you know he was there to discuss the obtaining of Mr. Chiappe, among others?

A Not specifically.

MR. SCHLAM: Objection, your Honor.

THE COURT: Overruled, I'll allow it.

Q When were you first told that you were going to go to Argentina to pick up three prisoners?

A As I said, within ten days prior toward departure.

Q And you never discussed it with Mr. Freid?

A Not personally, no.

Q Do you know of your own knowledge whether other DEA Agents were sent to Argentina prior to your arrival on May 26th?

A No.

THE COURT: For what purpose?

MR. CEDERBAUMS: For the purposes of this particular case, these three individuals that we are concerned with here.

THE WITNESS: There were none that I know of.

Q None that you know of?

A Right, no.

Q The only ones that you know, are the ones that flew down with you, right?

A Yes.

Q Prior to your taking Mr. Chiappe into custody, did you have any discussion with any DEA Agents in the Argentine section?

A Argentine section of headquarters, our headquarters?

Q Yes, DEA.

A We don't have an Argentine section. We've got a South American section. I didn't speak with anybody at all.

Q Who was it that, to your knowledge, advised

Mr. Chiappe of his rights?

A Well, I believe it would have been --

MR. SCHLAM: Objection.

THE COURT: Objection sustained. The trial has already been held, Mr. Cederbaums, this is a jurisdictional question. Let's stick to the issues, I don't have time to waste.

Now, if you're going into matters now that are outside these issues, I'll suspend and you can wait around until I get through with this civil matter.

MR. CEDERBAUMS: I have no further questions of this witness.

MR. SCHLAM: May I, briefly?

THE COURT: Very briefly.

REDIRECT EXAMINATION BY

MR. SCHLAM:

Q Agent Palumbo, were you ever in a farm house with Mr. Chiappe, in Argentina?

A No, I was not.

Q Were you ever in any location, at all, with Mr. Chiappe while his blindfold came down, other than the situation on the airplane when it was removed?

A No, I was not.

MR. SCHLAM: I have nothing further.

THE COURT: Anything further?

MR. CEDERBAUMS: No, your Honor.

THE COURT: You may step down, thank you. Is that the government's entire case?

MR. SCHLAM: Yes, your Honor.

THE COURT: That concludes the hearing. The application for a continuance in this matter is denied.

MR. CEDERBAUMS: Judge, I'd like to hear from Agent Corcoran I'd like to call him as a witness.

THE COURT: All right, sit around and I'll get through with the civil matter now, and then you can wait.

(A short recess was held.)

(Continued next page.)

MR. CEDERBAUMS: Your Honor, for the defendant I would have one more witness to call.

THE COURT: I don't know how long you're going to be with Mr. Corcoran. Is he outside in the hall?

MR. SCHLAM: He is in the back, with the defendant, your Honor.

THE COURT: How long are you going to be with Mr. Corcoran?

MR. CEDERBAUMS: Not long, your Honor.

THE COURT: How long is, "not long"?

MR. SCHLAM: I would say maybe five minutes at the most.

THE COURT: I'll take it now.

JOSEPH CORCORAN, having been called as a witness, was duly sworn by the Clerk of Court and testified as follows:

THE COURT: Am I going to have a transcript of this, Mr. Schlam?

MR. SCHLAM: We ordered it, your Honor: I haven't gotten last week's transcript yet, so it's not immediate, it's regular.

THE COURT: All right.

THE CLERK: Please state your name and spell it.

THE WITNESS: Joseph Corcoran, C-o-r-c-o-r-a-n.

DIRECT EXAMINATION

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Corcoran - direct - Cederbaums

Q Agent Corcoran, how long have you been with the DEA?

A Six years.

Q When for the first time were you made aware by anyone in your organization or the U.S. Attorney's office that you were going to be involved in bringing Mr. Chiappe and other prisoners to the United States from Argentina?

A Approximately a week before hand.

Q Did you discuss this with Mr. Fried, at all?

A Not directly, no.

Q Prior to the 26th of May, '76, have you ever been to Argentina before?

A No.

Q That was your first time?

A Yes.

Q And did you arrive on the same date that Agent Palombo testified he arrived?

A Yes.

Q Were you on the same flight with him?

A Yes.

Q When for the first time did you see Mr. Chiappe?

A When he boarded the aircraft.

Q I'm sorry?

A When he boarded the aircraft.

Crocoran - direct Cederbaums

Q Who put him on to the aircraft?

A Some police official from Argentina.

Q Are you sure about that?

A That's what I was told.

Q Other than what you were told, is there any other basis that you have for seeing these police officials from Argentina?

A No.

THE COURT: Did you see them board the plane?

THE WITNESS: I saw them come down the aisle. I was in the tourist section of the plane.

THE COURT: But, did you recognize those that were with him as being police officers?

THE WITNESS: No, they wore plain clothes.

THE COURT: Plain clothes?

THE WITNESS: Yes.

THE COURT: Did they speak Spanish?

THE WITNESS: Yes.

THE COURT: Did they continue with you across the --

Q Did they fly with you to the United States?

A No.

Q Did they depart off the plane?

A Yes.

Q Would you tell us please, was Mr. Chiappe in a straight jacket when you obtained custody of him?

A Yes.

Q Was he in handcuffs?

A No.

Q Was he blindfolded?

A Yes.

Q What can you tell us about the condition of his clothing, in terms of hygiene, cleanliness?

A Nothing. There was no odor or dirt that I could determine.

Q What about his mental lucidity: did he seem to you to be alert or otherwise?

A Alert.

Q When for the first time were the straight jacket and blindfold removed from him?

A Approximately 15 minutes after takeoff.

Q Was there any plan that you waited those 15 minutes?

A We were directed to.

Q What happened after you took the blindfold off after those fifteen minutes, and the straightjacket off?

A We sat him down between myself and the other agent.

Q Is that when he was advised of his rights?

A Yes.

Q By yourself?

A No, Agent Levine speaks Spanish.

Q What were you instructions when you went down to Argentina, in terms of who you were supposed to get?

A Three prisoners, Yolanda Samiento, Miguel Russo and Francois Chiappe.

Q Was there any discussion that you know about about a fourth prisoner?

A No.

Q And did you receive any instructions, at all, from the Argentine officials or were they solely from your own agency?

A My own agency.

Q Did you have any discussions, at all, with Argentine officials when you got there?

A No.

Q Do you know how your agency knew when to send the Braniff line down to pick up Mr. Chiappe?

A No.

Q Did you prepare any memoranda about your trip to Argentina, yourself, reports or memranda?

A Just an arrest report of Francois Chiappe when he was arraigned here.

Q That was his arraignment?

A Yes.

Q Did you report any summary report about how you fulfilled your mission that you were assigned to on the 26th of May?

A No.

Q To your knowledge, were there any other DEA agents who were present in Argentina during the week immediately prior to May 26th, 1976?

A I believe there were. We have an office in Argentina and those agents were assigned there permanently, but other than that --

Q How many agents are there in the office?

A 3, to my knowledge.

Q And do you know their names?

A Yes.

Q Could you tell me, please?

A Rhyn Tryanl, Pepi Hinojosa, and Gregory Phillips.

Q Did you have any discussions with those three gentlemen prior to your leaving from the United States?

A No.

Q About any subject, at all; did you talk to them on the phone before you left?

A No.

Q Did you communicate with them by mail?

A No.

Q Did you communicate with anyone, at all, in Argentina concerning your bringing back these three prisoners, from the Ambassador's office from the State Department, from your agency, or anybody else in Argentina?

A No.

Q Your only orders for communications was with your superiors her in New York; is that correct?

A Right.

Q What happened to the straight jacket and the blind fold that Mr. Chiappe had on then?

A I don't know. It was taken off him and I don't know what happened to it after that.

Q Did you ever voucher that?

A No.

Q Did you take any photographs of Mr. Chiappe which were taken immediately after his being placed in your custody?

A No.

Q Were there any photographs taken that you know of immediately after he was brought back to New York?

A Yes.

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Q There were?

A Yes.

MR. CEDERBAUMS: Do we have those available?

MR. SCHLAM: Photographs of Mr. Chiappe when he came back, the arrest photographs; we have arrest photos, those are the photos I think Mr. Corcoran is speaking of.

MR. CEDERBAUMS: I am asking whether any photographs were taken specifically of any injuries that he had at the time he was brought back.

THE COURT: Photographs, mug shots, showing the injuries.

MR. CEDERBAUMS: Judge, when I worked in the D.A's office in Manhattan, it was always when there was any allegation of injuries, we used to photograph what you call a stand up, nude or close ups of what ever areas were involved. So, I wonder if --

THE COURT: I asked Mr. Chiappe, I think when he returned here, I made notes of all of his injuries on the record, as I recall it.

MR. SCHLAM: Yes, May 27, 1976.

THE COURT: No question of the injuries, I'm not questioning whether he got them from the Argentine police or resisting them, that was something that just came out at this hearing.

I just took it for granted that he was beaten by the Argentine police, and now there is a big question mark in my mind, but there is no question about the injuries, the injuries that have been inflicted upon him --

MR. CEDERBAUMS: Or, at whose orders they were inflicted, your Honor.

THE COURT: My courtroom deputy thinks that I directed they be taken. I don't recall if that was true, I don't remember that.

MR. CEDERBAUMS: If there were any pictures, Judge, Mr. Schlam can find them. I want them part of the record, that's the only reason why I'm asking.

THE COURT: We'll make it part of the record. I don't know what it's got to do with the case, the real question is who did it and not what they were. He was hurt.

Q Did you also see Russo when he was taken aboard the plane?

A Yes.

Q And tell us, please, what his condition was in terms of his restraints?

MR. SCHLAM: I'll object to that.

THE COURT: Sustained as to the form. I would like to question him myself; was Mr. Russo in a straight jacket?

THE WITNESS: No.

THE COURT: Was he in handcuffs?

THE WITNESS: Yes.

THE COURT: Was he blindfolded?

THE WITNESS: Yes.

Q How about Miss Samiento?

A The same as with Russo.

Q She was handcuffed?

A Yes.

Q And blindfolded?

A Yes.

Q She was not straight jacketed?

A No.

Q When you saw Mr. Chiappe, was he struggling?

A No.

Q Was he resisting anybody at the time that you saw him?

A No.

Q Did he offer any resistance during the 15 or so minutes that you saw him with the straight jacket on before you removed it from him?

A No.

Q So, other than what your orders were, there was no other reason for keeping him in that condition· is that right?

A No.

Q Did any of the persons that brought Mr. Chiappe on to the plane and give him over to you, did any of them tell you that he was violent or had been resisting?

A No.

Q By the way, was he able to walk under his own power or did he have to be assisted or aided?

A No, he walked himself.

Q Was his gait perfectly normal?

A Yes.

Q Did he show signs of pain or difficulty in walking?

A No.

Q How about when you brough him off the plane here?

A No.

MR. CEDERBUAMS: I have no further questions.

THE COURT: Any questions?

MR. SCHLAM: No questions.

THE COURT: You may step down. The hearing is

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concluded.

MR. CEDERBAUMS: Judge, for the record, what I requested in my moving papers was that we have further lengthy evidence in the matter.

THE COURT: What was that?

MR. CEDERBAUMS: I request further lengthy evidence in terms of --

THE COURT: Yes, I know you did.

MR. CEDERBAUMS: The reason I asked it, Judge, was because to my mind, the relevance of the articles I present ed to you as far as the other witnesses, was to show a pattern of conduct, the parallel of which I drew in the paper was, Judge, that was based on what I knew about the creation of the DEA and that the DEA was created as a spin-off organiation from what became known as the Plumber's Unit of the White House.

At the time the Plumber's Unit was set up to wage war on insurgents or on agencies just as the way the DEA was set up, set up to wage war on international drug traffic, and I lay out in my papers what the Plumber's Unit did when they found the Executive Laws was insufficient for them, and that as a result of perhaps even earlier articles that appeared in news papers, it was later --

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THE COURT: I want you to go ahead and compete you statement, and I'll have one for you.

MR. CEDERBAUMS: That as a result of these investigations, many of these activities were shown to be illegal, despite their high motives and the greater majority of those people went to jail.

My argument is, I am not in a position nor is the defendant to actually prove who was involved. I am not in a position because I wouldn't know where to turn for that kind of information. He wasn't in a position because he was blindfolded and restrained and the only people who are in a position to supply this information are the people that have the knowledge, which are the people as I laid out in my moving papers, and that is basically the thrust of my argument.

THE COURT: Have you finished?

MR. CEDERBAUMS: Yes.

THE COURT: You are not the first lawyer, nor will you be the last, that attempts to trigger an investigation of every agency in Government based on every charge that was ever made against our Government and finds a fortuitous argument in the news paper charges arising out of Watergate. I have forclosed lawyers from arguing that to the jury and I

13 foreclosing it now.

What happened here is that a lawyer decided early in the case that he was going to move under Toscanino to deprive this Court of jurisdiction. He then built up a claim based on testimony by Mr. Chiappe that he heard two English speaking men, and based upon what Mr. Chiappe said he heard and then later I think he described him as a DEA agent, from that the lawyer attempted to build a scaffold without any foundation at all, just based on every article that attracted any news paper man, whether based on fact or not, and fiction was even more fascinating than fact in treating the United States government as having control over every government in South America, and in manipulating control over every one of its moves. There is going to be nothing like that in this case, at all.

I'm going to write to this and I'll have my opinion I hope before the sentencing date, but I may have a lot to say about the tactics of lawyers in case such as this, wasting the time of the Court and that's all it is, putting the Government to an expense, not caring one bit about how much it costs to have the Government to disprove by negative testimony every claim that's made. I think it has to

14

stop.

The hearing was shot through with perjury. perjury on behalf of Mr. Chiappe, he's ready to say anything whether it's suggested by the lawyers or whether he suggests it to the lawyers, I'm not sure at this point, and that's all I have to say, I will have more to say about it later.

* * * * * * * * *

Kurt W. Muellenberg, Chief
Narcotic and Dangerous Drug Section
Criminal Division

MAY 5 1976

Bernard J. Fried, Chief
Narcotics Section
Eastern District of New York

Possible Expulsion of Eastern District of New York Fugitives by the Government of Argentina

At your request, the following memorandum briefly summarizes the plan of action regarding the expulsion of Eastern District of New York fugitives by the Govenment of Argentina.

On April 29 and 30, 1976, Louis G. Fields, Jr., Assistant Legal Advisor, Department of State, and I met with U.S. officials in Buenos Aires in connection with this matter. During that time, Mr. Fields accompanied Ambassador Hill and SAIC Rhyntryal, BADO, DEA, to a meeting with the Minister of Argentina to discuss, among other things, this subject. The Minister indicated that he would be willing to expel the sought offer fugitives but that he wanted to obtain the approval of the President of Argentina (and the rest of the cabinet). He requested that Ambassador Hill, Mr. Fields, and SAIC Tryal, return to meet him on May 4, 1976 at 6:00 p.m., at which time he would inform them of the Government's decision. (The Minister was confident that he would be given the authority and approval for expulsion).

Assuming that the authority is given, then the Minister will appoint an official to deal directly with SAIC Tryal to make all necessary arrangements. This will also include "assurances" that Argentina Nationals will be permitted to return after prosecution as required by I&NS. However, if such "assurances" satisfactory to the I&NS could not be obtained, I informed SAIC Tryal that the U.S. Attorney for E.D. of New York would seek the intervention of the Attorney General.

Ambassador Hill has insisted that the fugitives be returned alone in a chartered plane. I agree with this and U.S. Attorney Trager concurs. Moreover, it is our position that the airplane should fly non-stop to the USA. The following additional requirements were given to SAIC Tryal:

a. The Argentines should be exhorted to properly treat the fugitives.

GOVERNMENT EXHIBIT
3
73CR164

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b. Upon the turnover (or prior to departure if Argentine police officials are to take the expellees to the USA) photographeidentifications will be taken in Buenos Aires.

c. A doctor (preferably American) will accompany the persons.

d. There will be a sufficient complement of agent and/or police authorities to ensure secrrity of all persons.

I do not read any plan for presenting cases to INS - also nothing is said about "summaries" being furnished INS. Nor do I read of any arrangement & await I&NS authorization for parole. They were our stated requirements!

G

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U. S. DISTRICT COURT E.D. N.Y.
★ FEB -1 1977 ★
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -

73 CR 164

UNITED STATES OF AMERICA

-against-

FRANCOIS CHIAPPE,

Defendant.

Memorandum of Decision
and Order

February 1, 1977

- - - - - - - - - - - - - - - - - - -

APPEARANCES:

HONORABLE DAVID G. TRAGER
United States Attorney
Eastern District of New York
Office and P. O. Address
No. 225 Cadman Plaza East
Brooklyn, New York 11201
Of Counsel: Peter Schlam, Esq.
Assistant United States Attorney

M'FILMED

GINO GALLINA, ESQ.
Attorney for Defendant
Office and P. O. Address
No. 30 Broad Street
New York, New York 10038

MISHLER, CH. J.

Defendant moves to set aside the jury verdict of guilty on a narcotics conspiracy charge (21 U.S.C. §§173

49 FC

and 174), claiming the court lacked personal jurisdiction because of the alleged participation of United States officials and agents in his forcible abduction from Argentina. See United States v. Toscanino, 500 F.2d 267 (2d Cir.1974).[1] The court held a post-trial hearing.[2] The court also considered Mrs. Chiappe's deposition concerning the presence of English-speaking bystanders at the time of defendant's arrest on May 21, 1976, as well as the depositions of Ms. Ester Szulman, Mr. Benito Eleodoro Quiroqa, and Mr. Lopez Tressa offered by defendant. The court finds as follows:

On March 31, 1976, Bernard Fried, Assistant United States Attorney for the Eastern District of New York and Chief of the Narcotics Section, conferred with Special

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[1] The motion made here, as in Toscanino, is described as a motion to dismiss. This is a misnomer since no challenge is made to the manner in which the indictment was returned, and the acts charged allegedly occurred after the return of the indictment. Defendant disputes the right to try him because of the alleged procedure employed by the United States in bringing him within the jurisdiction of this court.

[2] The trial was a joint trial with Miguel Russo. Russo waived the claim made here though he was in custody with Chiappe under the same conditions and brought to this jurisdiction on the same air flight. The court decided that the most efficient way to conduct the hearing on this motion was post-trial.

Agent Gregory Phillips of the Drug Enforcement Administration ("DEA"), and representatives of the Immigration and Naturalization Service and the Department of Justice, in Washington D. C. Discussion centered around the treatment to be accorded fugitive defendants expelled by the Argentinian Government. In light of Toscanino, Mr. Fried advised them not to participate in any explusion. On April 27, 1976, Mr. Fried arrived in Buenos Aires with a legal adviser to the Department of State. The following morning they met with Rayhn Tryan, special agent of the DEA in charge of the Buenos Aires office, and Mr. Phillips, to instruct the Argentinians on the need to avoid mistreatment of any suspects because of the possibility that subsequent prosecution might be invalidated under Toscanino. The next day, Fried met with Ambasador Robert Hill, and asked him to convey to the Argentinian Minister of the Interior, his concern about the treatment of citizens or residents of Argentina who might be turned over to the United States Government for prosecution on narcotics charges.

Sometime prior to May 21, 1976, the United States Government advised the Argentinian Government of the charges pending against both Chiappe and Russo and of its willingness to prosecute them. On May 21, 1976, at about 3:00 P.M., Chiappe was driving his car in the company of his wife in LaFalda, Argentina. Ten to twelve Argentinian police officers riding in three vehicles brought his vehicle to a stop. They exited their vehicles and forcibly removed Chiappe from his car without identifying themselves. Chiappe, believing that he was being kidnapped by guerrillas, resisted arrest. The police assaulted him knocking his teeth out and causing other injuries about the head and body. The police then handcuffed him or otherwise tied his hands behind his back, tied his feet, blindfolded him, and forced him into a vehicle. He was driven to one location and then flown to another. A strait jacket replaced the binding on his wrists; the blindfold remained. Chiappe recognized the presence of one Miguel Russo and one Yolanda (Samiento). He was kept in the strait jacket and blindfold for five days in the same room with the both of them.[3]

On May 26, 1976, Chiappe, Russo and Samiento were driven under Argentinian guard to Buenos Aires Airport. In the meantime, DEA agents flew to Argentina to take custody of the three. They arrived on a Braniff Airlines flight chartered by the United States on May 26, 1976 at about 9:30 P. M. The Argentinian police accompanied the three prisoners aboard the plane, placed them in the custody of the United States agents, and then left the aircraft. The plane was in flight soon after midnight of May 27, 1976. Approximately fifteen minutes out of Buenos Aires Airport, Special Agent Corcoran, assigned to guard Chiappe, removed the strait jacket and blindfold. The airplane arrived at John F. Kennedy International Airport on the morning of May 27, 1976. No claim is made of mistreatment by United States agents after defendant came into United States custody.[/4]

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[3] Chiappe testifed that he was beaten repeatedly during this period. The court rejects his testimony of physical abuse (other than the restraints and blindfold) as unworthy of belief.

The court rejects the testimony of Chiappe and his wife concerning the presence of English-speaking people at the time of his arrest and during his incarceration in

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[/4] Chiappe was interviewed by Mr. Fried in the early afternoon of May 27, 1976, after having been advised of his rights under Miranda. He advised Mr. Fried that he had no knowledge of participation of United States officials in his arrest or during his incarceration in Argentina. He stated that the first contact he had with English-speaking people was when he boarded the airplane at Buenos Aires for the flight to John F. Kennedy International Airport.

Argentina believing it to be a fabrication crudely designed to fit the Toscinino standards for defeating personal jurisdiction otherwise obtained over non-resident aliens.

The court finds that the United States advised the Argentinian Government of the pending narcotic charges against Chiappe and others, and its intention of prosecuting the charges if it obtained jurisdiction over them. It urged the Argentinian Government to avoid any acts which might place United States jurisdiction over defendants in doubt. No United States official or agent participated in any decision relating to the time or manner of effecting Chiappe's arrest or his subsequent incarceration in Argentina. Nor was any American official or agent present at the time of Chiappe's arrest or during his incarceration in Argentina. The first contact any United States official or agent had with Chiappe was aboard the Braniff airplane at Buenos Aires Airport on May 26, 1976, at about 9:30 P. M. prior to take-off on its flight to John F. Kennedy International Airport.

Accordingly, the motion is in all respects denied, Ker v. Illinois, 119 U.S. 436, 7 S.Ct. 225 (1886), Frisbie v. Collins, 342 U.S. 519, 72 S.Ct. 509 (1952), and it is

SO ORDERED.

U. S. D. J.

FILED
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U. S. DISTRICT COURT E.D. N.Y.
★ JAN 24 1977 ★
TIME A.M. ____
P.M. ____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

------------------------------------x

UNITED STATES OF AMERICA,

- v -

FRANCOIS CHIAPPE,

Defendant.

------------------------------------x

Ind. No. 73 CR ~~239~~ 164

MOTION FOR NEW TRIAL

The defendant moves this Court before the Hon. Jacob Mishler for a new trial on the following grounds; pursuant to Rule 33, F R Crim. P.

1. Certain Argentine Court documents have been located which tend to prove that the testimony of a key government witness, Argentine Police Officer Borsalino, was not truthful when he testified concerning the events of May 1968 when defendant was arrested in Argentina.

2. That these documents were known, or should have been known, to police Officer Borsalino, Judge Rene Nikleson, and Assistant United States Attorney Peter Schlam, and that the failure to disclose these documents to defendant, and permitting Borsalino and Nikleson to testify, as they did in light of these documents, constituted deliberate suppression of evidence favorable to the defendant.

DATED: New York, New York

January 20, 1977

Respectfully submitted,

JURIS G. CEDERBAUMS
Attorney for Defendant
30 Broad Street
New York, New York 10004
(212) 425-1060

DAVID TRAGER
TO: ~~ROBERT B. FISKE~~
United States Attorney
by Peter Schlam, AUSA
Clerk of the Court
Eastern District of New York

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FC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---------------------------------------x

UNITED STATES OF AMERICA

- v -

FRANCOIS CHIAPPE,

Defendant.

---------------------------------------x

Ind. No. 73 CR 239

AFFIDAVIT IN SUPPORT OF MOTION FOR NEW TRIAL

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

JURIS G. CEDERBAUMS, an attorney duly admitted to practice before this Court, hereby states, under the penalty of perjury, that the following is true, based on information and belief:

1. That I am the attorney for FRANCOIS CHIAPPE, the defendant in

this case, and am familiar with the facts and circumstances of this case.

2. That on or about January 6, 1977, I received certain documents from Mrs. Chiappe which she had obtained from the Argentine Court file relative to defendant's arrest in May of 1968. These documents are attached as an Exhibit to this motion.

3. As soon as these documents were received by me, they were sent out to be translated. The translations are also enclosed as an Exhibit.

4. From a reading of these documents, they suggest that the arrest of Mr. Chiappe occurred on May 15, 1968, not May 17, 1968 as was testified to by Police Officer Borsalino, an Argentine police officer.

5. That these documents further show that the money ($19,000.00 U.S. currency plus Argentine currency) was returned to Mrs. Chiappe, along with a plaid grey hat pursuant to the Court's order provisionally dismissing the bank robbery case against the defendant in Argentina. Defendant also testified concerning a hunting hat he had seen at the police station some days after the arrest, which led him to believe that his apartment had been searched (T. 820).

6. That Borsalino, at the trial, testified that the arrest took place on May 17, 1968 (T. p. 723), contrary to defendant's testimony that it occurred on May 15, 1968 (T. p. 812).

7. That Borsalino testified that he had no knowledge of any items other than the money having been returned to Mrs. Chiappe (T. 739).

8. That Judge Nikleson testified that Mr. Schlam had seen the court file, and that he (Nikleson) had also seen the court file in Argentina (T. 766-769).

9. That Judge Nikleson further testified that he was not concerned with any orders of the Argentine court returning the money or any other items (T. 770).

10. That Assistant United States Attorney Peter Schlam, the prosecutor at the instant trial, had also examined the robbery case file in Argentina (T. 740-41).

11. That Gino E. Gallina, Esq., defendant's attorney at the trial, had requested records concerning defendant's robbery arrest in Argentina in May of 1968 (T. 840), and questions put by Mr. Gallina to Police Officer Borsalino concerning said records were disallowed by the Court as being argumentative (T. 982, 983), although the Court itself requested the Argentine court's records (T. 836, 840).

12. That I have further requested additional records, referred to in those received, from Mrs. Chiappe and Dr. Bernardo Beideman, defendant's attorney in Argentina, relative to the true date of arrest.

13. That because defendant was denied the right to confront the witnesses with these records to attack their credibility, and to prove that the money seized was in no way connected with any alleged drug trafficking profits, he was denied a fair trial.

JURIS G. CEDERBAUMS

Sworn to before me this

21 day of January, 1977.

Eric J Weiss

ERIC J. WEISS
Notary Public, [illegible] New York
No. [illegible]
Qualified in [illegible] County
Commission Expires March [illegible] 1978

Poder Judicial de la Nación

H/

MIGUEL A. INCHAUSTI
JUEZ FEDERAL

Juez

//////.nos Aires, 26 de febrero de 1969.-

AUTOS Y VISTOS:

Para resolver en éste sumario nº 717/68 y con res
to a los procesados FRANCISCO CHIAPPE, Prio.R.H. 160.746, y LUCIEN
TI ó LUCIANO SANCHEZ, Prio. R.H. 160.745, cuyas demás condiciones
nales constan en autos, en orden al delito de robo que se les impu

Y CONSIDERANDO:

I.- Que el día 19 del mes de abril del año ppdo.,
agencia nº 10 del Banco de la Nación Argentina fué asaltada, en ho
de la mañana, por cuatro individuos del sexo masculino que, actuand
el local de aquella embozando sus rostros y convenientemente armado

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lograron, luego de reducir a varios empleados, apoderarse de la su de m$n 65.596.000 aproximadamente, con la cual desaparecieron.-

II.-Que instruída la prevención policial y remiti ya éstas constancias al Juzgado (fs.82 vta.), con fecha 17-V-68 in mó la Sec. Robos y Hurtos de la Policia Federal de haberse proced la detención de los nombrados Chiappe y Sarti, indicando que éstos bian sido reconocidos, en fotografias, por empleados de la agenc caria asaltada; ello surge también del acta de fecha 15-V-68 (fs.1 vta.), agregándose luego las fotografias de ámbos procesados -a fs. y 115- y de otros individuos presumiblemente integrantes de su [illegible] delictivo (fs.116 a 119).-

Fecha de detención

III.-De fs.113 a 234 corren aquellas nuev [illegible] nes policiales antedichas, iniciadas a consecuencia del [illegible]

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/////// do -por funcionarios policiales franceses- entre el retrato confeccionado en base a las descripciones de los testigos del hecho, correspondiente a uno de los autores del mismo, y la fisonomía del delincuente frances Francisco Chiappe; posteriormente, entre las variadas diligencias efectuadas siempre en sede policial, los testigos de fs.131, 132, 133, 134, 135 y 136 reconocen, con m-ayor o menor grado de certeza, y en las fotografias que se les mostraran co--rrespondientes a los encausados en autos, a las personas que asaltaran la sucursal bancaria indicada.-

IV.- Indagado a fs. 241 y siguientes, Francisco Chiappe negó ser el autor del hecho motivo de ésta investigación, expresando que a la fecha en que ocurriera el mismo no se encontraba en territorio argentino puesto que días antes habia viajado a la República Oriental del Uruguay, arribando de retorno, al puerto de la ciudad de Buenos Aires, a las 17.00 hs. del día 19-IV-68.

Por su parte, al ser indagado Lucien Sarti ó Luciano Sanchez (fs.247 y siguientes), señaló, al igual que el anterior, ser ajeno al evento delictivo en cuestión -asalto a la sucursal bancaria-, del cual tomó conocimiento -dice- por los periódicos; añade no recordar qué actividades cumplió el día del suceso motivo de éstas actuaciones.-

V.- Que en punto a resolver la situación de los [illegible] sados nombrados, es de señalarse que, pese al cúmulo de diligencias efectuadas, no ha sido posible establecer -como se adelantara a fs.522- la efectiva participación de aquellos en el atraco que diera origen //////////////

MIGUEL A. INCHAUSTI
JUEZ FEDERAL

////// al presente sumario sumario, con la certeza relativa que r
re la norma del art. 366 de la ley ritual en la materia.

En efecto, en orden a Francisco Chiappe debo indica
que sus descargos -alejamiento transitorio del pais- encuentran co
boración en el informe policial de fs.285 y en la tarjeta de regis
del Hotel Columbia (fs.284) que se anexara al mismo, tarjeta aquel
cuyas constancias manuscritas, segun pericia caligráfica de fs.517
ron asentadas por el nombrado procesado; a ello cabe añadir el ter
la declaración prestada a fs.305 por el Inspector de la Dirección
cional de Migraciones Antonio Federico Garcia Franzotti, de cuyos
chos resulta la autenticidad del correspondiente sello de ingreso,
tado en el pasaporte nº 861.232/P agregado ahora a fs.521, declara
aquella confirmada por el informe de la repartición aludida, de fs
trocientos dos y siguiente.

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Por lo demás, el resultado de los reconocimientos ef
dos en la persona de Francisco Chiappe, especialmente los que resul
de las actas de fs.86 y 88, 91 y 92, y 95 y 97, no permiten fund
correctamente su posible responsabilidad penal, ni aun considerando
evidente parecido físico resultante de la pieza incorporada a fs.2
toda vez que frente a los mismos se alzan los restantes, de result
negativo, y que, además, aquellos fueron posteriores a los reconoc
mientos fotográficos mencionados en el punto tercero de la presente
que les resta valor procesal.-

Respecto de Lucien Sarti ó Luciano Sanchez, las prue
de autos tampoco resultan suficientes para responsabilizarlo en ord
al atraco investigado, toda vez que los reconocimientos del mismo e
tuados por los testigos del hecho no dieron resultado positivo -

///// el de fs.105, de carácter dubitativo y huerfano de apoyo-, no habiéndose secuestrado elemento alguno que permita vincularlo directamente con la sustracción investigada.-

Que en éstas condiciones entonces, y no restando otras diligencias que practicar, corresponde hacer lugar al temperamento propiciado por el Ministerio Fiscal a fs.544 -recordando que la querellante no evacuó la vista que oportunamente se le corriera, segun resulta de fs.542- toda vez que, pese a lo antes expresado, la personalidad de los prevenidos, notoriamente conocidos en el ámbito de la delincuencia internacional, los importantes recursos económicos con que cuentan, pese a no ejercer actividad laboral en el pais, y la circunstancia de haber ingresado ámbos a la República Argentina validos de falsa documentación impiden desvincularlos definitivamente del proceso, debiendose también tener en cuenta elementales razones de prudencia y las demás probanzas acumuladas al sumario -v.g. acta de fs.256, entre otras-, todo lo cual obsta sin duda, a considerarlos totalmente exentos de responsabilidad penal, como lo requiere el art. 434 inc.3º del Código de Procedimientos en lo Criminal.-

Por todo ello, de conformidad fiscal, de acuerdo con lo establecido por el art. 435 inc.2º del texto legal citado, en definitiva,

RESUELVO:

SOBRESEER PROVISIONALMENTE en la presente causa nº 717/68 y con respecto a los procesados FRANCISCO CHIAPPE y LUCIEN SARTI ó LUCIANO SANCHEZ, de las condiciones personales consignadas en el exord

///////

///// en orden, unicamente, al delito de robo que se les imputar
autos, debiéndose proseguir las actuaciones respecto del hecho d
tivo por el cual se decretara lamedida cautelar prevista en el a
366 del Cód.Proc.Crim.,segun resulta de la resolución firme de fs
522,y siguiente.-

Notifíquese, anótese, y consentido o ejecutoriado
sea, comuníquese a quien corresponda. Fecho, vuelva a despacho.-

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MIGUEL A. INCHAUSTI
JUEZ FEDERAL

En 26 del mismo se libró cédula de notificación a la querellan

CONSTE.-

GUILLERMO F. RIV
SECRETARIO FEDERAL

6

////// 26 de Marzo de 1969, compareció en Secretaría MARGARITA M NAVAL de DINOMO, quien acredita identidad con C.I Nº5.271.988/ de la Policía deral Argentina, a quien se le hace entrega de la suma de die ve mil ochocientos dolares estadounidenses, y de la cantidad de cuenta y dos mil cuatrocientos pesos en Moneda Nacional, recibie todo ello de conformidad, y firmando para constancia, por ante m que doy fe.-Entre líneas:"nº 5.271.988"Vale.-

x

En la misma fecha se hace entrega a la nombrada antes, MARGARI MARIA NAVAL DE DINOMO, de un par de zapatillas azules, con suela goma, una gorra gris a cuadros con marca de Spineto, firmando la brada por su recibo, de conformidad, por ante mi que doy fe.-

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X. Chiappe

NOTA: de haberse depositado en el incidente respectivo de FRANCI
CHIAPPE la suma de doscientos mil pesos moneda nacional que le f
ra reclamada a embargo, disponiendo S.S. dejar sin efecto la re
ción de dicha suma ordenada a fs.582 vta. de la presente causa.-
SECRETARIA: Buenos Aires, Marzo 26 de 1969.-

REPUBLICA ARGENTINA

MINISTERIO DEL INTERIOR

POLICIA FEDERAL

Dto. nº 509

eavlz.

262

Buenos Aires, mayo 24 del año 1966.-

2

A S.S. el señor Juez Nacional de Primera Instancia en lo Criminal y Co
rreccional Federal, Doctor MIGUEL ANGEL INCHAUSTI-Secretaría del Doctor
GUILLERMO FEDERICO RIVAROLA.-

Del Jefe de la Sección Robos y Hurtos, Comisario ALEVI ELIO ROSSI.-

OBJETO: Informar antecedentes vecina

Tengo el agrado de dirigirme a V.S. co
motivo de actuaciones incoadas en esta Sección por "INDAGACION HURTO" c
las que resultaron imputados LUCIANO SARTI y FRANCISCO CHIAPPE, a fin d
llevar a su conocimiento, que el primero de los nombrados no vive en e
lugar que diera como domicilio, habiéndose mudado del mismo hace un mes
aproximadamente, informando al respecto Francisco Sinómino, encargado d

Nº 717/6

la finca al Oficial Inspector Oubiña del personal de la comisaría 21a.-

En cuanto a FRANCISCO CHIAPPE, se estableció que vive en el lugar que
ra como domicilio desde hace 7 meses con sus suegros, esposa y [illegible]
bita una pieza y comparte una cocina y baño, no abonando alquiler y re
día anteriormente en el Club Francés ubicado en el barrio de Constitu
de esta Capital Federal; no es enfermo ni alcoholista y se desconoce si
taba armas, siendo su concepto y conducta en el vecindario buenos, info
de Grasso Frida, Bermúdez 3712 y Teresa Chigini, domiciliada en Bermúde
3758 al Oficial Inspector Galan del personal de la comisaría 45a.-quie
estableció además que el nombrado recibía mensualmente una suma de di
proveniente de una hermana que posee restaurante, se ignora dónde.-

Saludo a V.S. con mi más distinguida co

deración.-

Bertrand Studio

For bulk and printed matter
please use this address:

Lewis Bertrand
P. O. Box 1243
F. D. R. Station
New York, N. Y. 10022
USA

Jose M. Moreno-Lacalle
405 West 57th Street
New York, N. Y. 10019
Phone 541-6265

- TRANSLATION
- INTERPRETING
- COACHING
- LANGUAGE MATERIALS
- PUBLISHING
- BROADCASTING

STATE OF NEW YORK)
:ss
COUNTY OF NEW YORK)

Jose Moreno-Lacalle, being duly sworn, deposes and says:

That (~~s~~)he is a translator and associate of the language Studio whose name appears hereon; that (~~s~~)he is thoroughly acquainted with the Spanish and English languages; that (~~s~~)he has made the translation of the document(s) described below and appended hereto; and that the translation is, to his (~~her~~) best knowledge and ability, a true and correct English rendering of the original document(s) in Spanish.

José Moreno-Lacalle
Translator's Signature

Sworn to before me

this 11 day of January 1972

Eric J. Weiss
ERIC J. WEISS
Notary Public, State of New York
No. 41-[illegible]
Qualified in Queens County
Commission Expires March 30, 1978

Description of Document(s) Translated:
Studio Reference No.# 1-03/77 b.

Summary No. 717/68
Dated 2-26-69

Judicial Power of the Nation

(stamp) Miguel A. Inchausti
Federal Judge

Buenos Aires, February 26, 1969.-

WHEREAS:

To resolve in this summary No. 717/68 and with respect to the defendants FRANCISCO CHIAPPE, Pris. R. H. 160,746, and LUCIEN (SAR)TI or LUCIANO SANCHEZ, Pris. R. H. 160,745, whose other criminal conditions are found in case proceedings regarding the crime of robbery of which they stand accused.

AND CONSIDERING:

I. That on the 19th day of the month of April of last year, Branch No. 10 of the Banco de la Nación Argentina was attacked, during morning hours, by four individuals of the male sex who, acting in the locality of said agency, with their faces masked and suitably armed, succeeded, after having subjugated several employees, in taking hold of the sum of $65,596,000 in national currency, with which they disappeared.

II. That police enforcement having been informed, and these allegations having been submitted to the court (fol. 82v), on 5-17-68 the Robbery and Theft Sect. of the Federal Police advised that it had proceeded with the arrest of the mentioned Chiappe and Sarti, indicating that they had been recognized in photographs by employees of the attacked bank branch; it also comes out in the document dated 5-15-68 (fol. 113v.), the photographs of both defendants were later attached to fols (number illegible) and 115 - and those of other individuals presumably a part of their delinquent group. (fols. 116 to 119).

III. From fols. 113 to 234, there are found those new (illegible word(s)) of the police mentioned above, initiated as a result of the similarity (illegible word) - by French police officials - between the portrait created on the basis of the descriptions of the witnesses of the crime, corresponding to one of the perpetrators of same, and the physiognomy of the French criminal Francisco Chiappe; later, among the several proceedings, always performed at police headquarters, the witnesses in fols. 131, 132, 133, 134, 135 and 136 recognized, with greater or lesser degrees of certitude, and in the photographs that they were shown which corresponded to those accused in proceedings, the persons that attacked the indicated bank branch.

IV. Interrogated in fols. 241 et. seq., Francisco Chiappe denied being the author of the crime which is the motive for this investigation, saying that on the date upon which same would have occurred he was not to be found in Argentine territory since he had several days before travelled to the Oriental Republic of Uruguay, arriving upon his return in the port of the city of Buenos Aires, at 1700 hrs., on 4-19-68.

For his part, upon being interrogated, Lucien Sarti or Luciano Sanchez (fols. 247 et. seq.) indicated, as had the preceding, that he was alien to the delinquent event in question -- the attack on the bank branch -- of which he became aware - he says - through the newspapers; he adds that he does not recall what activities he undertook on the day of the occurence which is the motive for these proceedings.

V. That with the aim of resolving the situation of the mentioned defendants, it is to be pointed out that, despite the great quantity of proceedings carried out, it has not been possible to establish - as shall be set forth in fol. 532 - their effective participation in the attempt that gave origin to the present summary, with the relative certitude that is required by the norms of Art. 366 of the law that covers this matter.

In effect, regarding Francisco Chiappe, it should be indicated that his alibis - transitory absence from the country - find corroboration in the police report of fol. 285 and in the registration card of Hotel Columbia (fol. 284) which is attached to same, which card's handwritten data, according to the calligraphic expertise in fol. 517, were entered by the defendant in question; to this should be added the tenor of the statement made in fol. 305 by the Inspector of the National Directory of Migrations, Antonio Federico Garcia Franzotti, whose assertions authenticate the corresponding entry visa, stamped in Passport No. 861, 232/P now attached to fol. 521, which statement is confirmed by the report on the alluded deal in fols. four hundred and two et. seq.

For the rest, the results of the recognition made of the person of Francisco Chiappe, especially that which come out of the minutes of fols. 86 and 88, 91 and 92, and 95 and 97, does not allow the correct establishment of his possible criminal responsibility, not even considering the apparent physical similarity resulting from the item included with fol. 287, since each time that the rest are placed before same, the results are negative, and, moreover, those were after the photographic recognitions mentioned in the third point of this document, which reduces their procedural value.

Regarding Lucien Sarti or Luciano Sanchez, the procedural evidence also fails to be sufficient to make him responsible for the assault under investigation, as the recognitions of same made by the witnesses of the act failed to yield a positive result every time - save that of fol. 105, of dubious character and lacking corroboration - not having set forth any element that would allow it to be connected directly with the theft under investigation.

That in these conditions then, and not removing other proceedings from possible inception, it is fitting to give place to the compromise propitiated by the Ministry of the Attorney General in fol. 544 - remembering that the plaintiff has not evacuated the hearing that he is duly entitled to, as set forth by fol. 542 - since, considering what was previously expressed, the personality of the detainees, notoriously known in the circles of international crime, the significant economic resources that they can count on, considering their not undertaking any job activity in this country, and the circumstance of both having entered the Republic of Argentina under false documentation, they impede definitively disconnecting them from the action. Also to be kept in mind are elementary reasons of prudence and the remaining evidences accumulated in the summary -- Cf. records of fol. 256, among others -- all of which doubtless impedes considering them totally exempt from criminal responsibility, as is required by Art. 434 inc. 3 of the Criminal Procedures Code.

Because of all this, with the prosecutor's agreement, in accordance with what is set forth by Art. 435 inc. 2 of the cited legal text, finally,

I HEREBY RESOLVE:

TO PROVISIONALLY SUPERCEDE, in the current case No. 717/68 and with regard to the defendants FRANCISCO CHIAPPE and LUCIEN SARTI or LUCIANO SANCHEZ, from the personal conditions consigned to the exordium in question only the crime of robbery that was imputed to them in the records, the actions regarding the criminal act for which the precautionary measure was decreed as foreseen in Art. 366 of the Crim. Proc. Code should be pursued, as it arises from the firm resolution of fol. 522 et. seq.

Let this be recorded, registered and published. Signed and dated.

(signed)
(stamp) Miguel A. Inchausti
Federal Judge

On the 26th of this month notice was issued to the plaintiff. LET IT BE SO RECORDED.

(stamp) Guillermo F. Rivarola, Federal Clerk

Bertrand Stud

For bulk and printed matter
please use this address:

Lewis Bertrand
P. O. Box 1243
F. D. R. Station
New York, N. Y. 10022
USA

Jose M. Moreno-Lacalle
405 West 57th Street
New York, N. Y. 10019
Phone 541-6265

- TRANSLATION
- INTERPRETING
- COACHING
- LANGUAGE MATERIALS
- PUBLISHING
- BROADCASTING

STATE OF NEW YORK)
:ss
COUNTY OF NEW YORK)

Jose Moreno-Lacalle, being duly sworn, deposes and says:

That (~~s~~)he is a translator and associate of the language Studio whose name appears hereon; that (~~s~~)he is thoroughly acquainted with the Spanish and English languages; that (~~s~~)he has made the translation of the document(s) described below and appended hereto; and that the translation is, to his (~~her~~) best knowledge and ability, a true and correct English rendering of the original document(s) in Spanish.

José Moreno-Lacalle
Translator's Signature

Sworn to before me
this 11 day of January 1977

Eric J. Weiss
ERIC J. WEISS
Notary Public, State of New York
No. 41-[illegible]
Qualified in Queens County
Commission Expires [illegible] 19 78

Description of Document(s) Translated:
Studio Reference No.# 1-03/77 d.

Receipts signed by Guillermo Rivarola

JUDICIAL POWER OF THE NATION

On March 26, 1969, MARGARITA MARIA NAVAL DE DINOMO appears at the Clerk's Office, and confirms her identity with I. D. No. 5,271,988, of the Federal Police of Argentina, and to whom is handed over the sum of nineteen thousand eight hundred United States dollars and the amount of fifty-two thousand four hundred pesos in national currency, receiving it all in good order, and signing for the record, before me who so swear. Inter linea: No. 5,271,988 Voucher.

(signed) M. N. de Chiappe

(signed)
(stamp) Guillermo Rivarola
Federal Clerk

On the same date there is turned over to the above-mentioned MARGARITA NAVAL DE DINOMO a pair of blue shoes with rubber soles, a plaid gray hat by Spineto, the person signing for their receipt, in good order, before me, who so swear.

(signed) Margarita Chiappe

(signed)
(stamp) Guillermo Rivarola
Federal Clerk

NOTE: there having been deposited, in the related incident of FRANCISCO CHIAPPE, the sum of two hundred thousand pesos in national currency that was reclaimed after seizure, the undersigned leaving the retention of said sum without effect as ordered by fol. 582v. of the current case.

CLERK'S OFFICE: Buenos Aires, March 26, 1969.

(signed)
(illegible stamp)

Bertrand Studio

For bulk and printed matter
please use this address:

Lewis Bertrand
P. O. Box 1243
F. D. R. Station
New York, N. Y. 10022
USA

Jose M. Moreno-Lacalle
405 West 57th Street
New York, N. Y. 10019
Phone 541-6265

- TRANSLATION
- INTERPRETING
- COACHING
- LANGUAGE MATERIALS
- PUBLISHING
- BROADCASTING

STATE OF NEW YORK)
:ss
COUNTY OF NEW YORK)

Jose Moreno-Lacalle, being duly sworn, deposes and says:

That (~~s~~)he is a translator and associate of the language Studio whose name appears hereon; that (~~s~~)he is thoroughly acquainted with the Spanish and English languages; that (~~s~~)he has made the translation of the document(s) described below and appended hereto; and that the translation is, to his (~~her~~) best knowledge and ability, a true and correct English rendering of the original document(s) in Spanish.

José Moreno-Lacalle
Translator's Signature

Sworn to before me
this 11 day of January 1977

Eric J Weiss

ERIC J. WEISS
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Commission Expires March 30, 1978

Description of Document(s) Translated:
Studio Reference No.# 1-03/77 f.

Letter from Commissioner A. Rossi
Dated 5-24-68

Buenos Aires, May 24, 1968

2

Republic of Argentina
(seal)

Ministry of the Interior

Federal Police

(stamp)

To his honor the National Judge of Criminal and Federal Correctional Appeals, Doctor MIGUEL ANGEL INCHAUSTI - Clerk's Office of Dr. GUILLERMO FEDERICO RIVAROLA.

From the Chief of the Robbery and Theft Section, Commissioner ALEVI ELIO ROSSI.

SUBJECT: Report on (illegible) case history.

I have the pleasure to address myself to you with regard to actions begun in this Section by "Theft Investigation," in which LUCIANO SARTI and FRANCISCO CHIAPPE ended up being accused, in order to bring to your awareness that the first of those mentioned does not live at the place he gave as his domicile, having moved from same approximately a month ago; in this regard, Francisco Sinónino, in charge of the farm, informed Officer Inspector Oubiña, of the staff of the 2nd Commissariat. In regards to FRANCISCO CHIAPPE, it was established that he lives in the place he gives as his domicile as of seven months ago, with his parents-in-law, his wife and a daughter; he occupies one floor and shares a kitchen and bath, not paying any rent, and he previously resided in the Club Francés located in the neighborhood of Constitución of the Federal Capital; he is neither ill, nor alcoholic, and it is unknown whether he carried weapons, his appearance and conduct in the neighborhood being good; Grassa Frida, Bormudez 3712, and Teresa Chigini, domiciled at Bermudez 3758, informed Officer Inspector Galán of the staff of the 45th Comissariat - who also established that the mentioned party received a monthly sum of money from a sister that owned a restaurant, whereabouts unknown.

Very truly yours,

(signed)

NOTICE OF ENTRY

Sir—Please take notice that the within is a (*certified*) true copy of a

duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

LEFEFSKY, GALLINA, MASS & HOFFMAN

Attorneys for

Office and Post Office Address

30 BROAD STREET

NEW YORK, N. Y. 10004

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

the day of 19

at M.

Dated,

Yours, etc.,

LENEFSKY, GALLINA, MASS & HOFFMAN

Attorneys for

Office and Post Office Address

30 BROAD STREET

NEW YORK, N. Y. 10004

To

Attorney(s) for

Index No. Year 19

73 Cr. 238

United States of America

against

FRANCOIS CHIAPPE

Defendant

Motion for New Trial

LENEFSKY, GALLINA, MASS & HOFFMAN

Attorneys for

Office and Post Office Address, Telephone

30 BROAD STREET

NEW YORK, N. Y. 10004

(212) 425-1040

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

[illegible] '77
EAST. DIST. N.Y.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ MAR 2 1977 ★
TIME A.M. ....
P.M. ....

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----------------------------------x

UNITED STATES OF AMERICA,

-v-

FRANCOIS CHIAPPE,
Defendant.

-----------------------------------x

Ind. No. 73 Cr. 164

SUPPLEMENT TO MOTION FOR NEW TRIAL

The defendant files this motion as a supplement to his original motion for a new trial dated January 20, 1977, made pursuant to Rule 33, Federal Rules of Criminal Procedure, on the grounds of newly discovered evidence which was suppressed by the Government at trial denying defendant a fair trial pursuant to the due process requirements of the Fifth and Fourteenth Amendments to the United States Constitution.

DATED: NEW YORK, NEW YORK
February 28, 1977

Respectfully submitted,

JURIS G. CEDERBAUMS
Attorney for Defendant
30 Broad Street
New York, N.Y. 10004
(212) 425-1060

TO: Hon. David Trager
United States Attorney
Eastern District of New York
225 Cadman Plaza, East
Brooklyn, N.Y. 11201

By: Peter Schlam, AUSA

Clerk, District Court
Eastern District of New York

(51)
FC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----------------------------------x

UNITED STATES OF AMERICA

- v -

FRANCOIS CHIAPPE,

Defendant.

-----------------------------------x

Ind. No. 73 CR. 164

AFFIDAVIT IN SUPPORT OF SUPPLEMENT TO MOTION FOR NEW TRIAL.

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

JURIS G. CEDERBAUMS, an attorney duly admitted to practice before this Court, hereby states, under the penalty of perjury, that the following is true, based on information and belief:

1. I am the attorney for FRANCOIS CHIAPPE, the defendant in this case, and am familiar with the facts and circumstances of this case.

2. That on January 20, 1977 I filed a motion for a new trial in behalf of my client which this Court adjourned until February 18, 1977. This motion represented that I was in fact waiting for additional documents from Argentina in support of my motion.

3. That on February 17, 1977, in thelate afternoon, I in fact did receive a package of additional documents from Argentina.

4. I reported this fact to the Court on February 18, 1977, at which time I requested additional time to translate and evaluate the newly received documents. At the Court's suggestion I immediately turned the documents over to Ms. Libya Clancy to have them translated. In the late afternoon of February 22, 1977, Ms. Clancy gave me the translations.

5. The documents received, and enclosed as exhibits hereto, are officially certified copies of Court documents and exhibits contained in the Federal Court file in Buenos Aires, Argentina, relative to the bank robbery incident for which Mr. Chiappe was arrested in May of 1968.

6. Most of these documents contain the official findings of the Federal Examining Judge, Miguel A. Inchausti, relative to the investigation of this incident. On information and belief, this procedure is equivalent to a combination of our Grand Jury and Preliminary Hearing.

7. The newly received documents contain the following information:

a) Document No. 1: A report that Lucien Sarti-- also arrested on the same day as Chiappe, at the same house-- also complained of torture by means of electricity on May 15 and 16, 1968, and the results of the physical examination of Sarti.

b) Document No. 2: A report dated May 15, 1968 prepared by Commissioner Rossi, Chief of the Robbery and Theft Section, outlining the basis on which Chiappe was arrested.

c) Document No. 3: Showing that in fact Chiappe had made a complaint of torture by means of electricity when he was brought before Federal Judge Inchausti, some ten days after his arrest

d) Document No. 4: Showing that Lucien Sarti was arrested on May 15, 1968 at the same house where Chiappe was staying, and that the reason for his being there was because it was Chiappe's birthday. (The government had stipulated that Chiappe's birthday is May 15, 1920). No testimony was given by Borsalino that Sarti was arrested at the same place, on the same day as Chiappe. This document further shows that at the time of his interrogation, Sarti was shown the same group photo which is in evidence at the trial, which Borsalino testified that he found at the Chiappe residence after a "consent search".

e) Document No. 5: Showing that the state of incommunicado of Chiappe was terminated on May 24, 1968 by Federal Judge Inchausti. It will be recalled by the Court that under Argentine law, the state of incommunicado must be terminated 10 days after arrest. Ten days before May 24, 1968 is May 15, 1968. An examination of Chiappe was also ordered.

f) Document No. 6: Showing the order releasing Chiappe from the state of incommunicado, dated May 24, 1968.

g) Document No. 7: Showing the results of the physical examination of Chiappe pursuant to his complaint of torture, ordered by Federal Judge Inchausti. This report concludes that the injuries observed "well may have been caused" by the torture of Chiappe. The Court should remember that this report is dated May 28, 1968 and reports on torture complained of by Chiappe on May 15, 1968. Apparently, the results of the torture were so obvious that even the Argentine Court under the military regime could not ignore it.

h) Document No. 9: A description by Sarti of the torture he was subjected to, with a statement that he did not originally report it because of fear of accusing the police. This torture was inflicted on him on May 15, and 16, 1968.

8. From the numberings seen on the enclosed pages, it would appear that the entire file must consist of well over 300 pages. These excerpts were mailed to me in reply to specific requests for information. I have not seen, nor do I know the contents of the remaining pages of the case file located in Buenos Aires, Argentina.

9. This is the same case file which was examined in Buenos Aires, Argentina by A. U. S. A. Peter Schlam, and his witness, Judge Rene Nikleson, from which they extracted the various items accepted in evidence in connection with the testimony of Police Officer Borsalino.

10. This is the same file, which was requested by defendant's trial attorney, Mr. Gallina, during the testimony at the hearing and trial of Police Officer Borsalino, and none of which was made available to him for purposes of inspection or used during cross-examination.

JURIS G. CEDERBAUMS

Sworn to before me this

1st day of March, 1977.

Eric J. Weiss

Notary Public

ERIC J. WEISS
Notary P[illegible] York
[illegible]
Qualified in [illegible]
Commission Expires [illegible] 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----------------------------------x

UNITED STATES OF AMERICA,

- against -

FRANCOIS CHIAPPE,

Defendant.

-----------------------------------x

Ind. No. 73 CR. 164

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR NEW TRIAL

I. THE NEWLY DISCOVERED EVIDENCE

Documents have now been received from Argentina which demonstrate that a key prosecution witness at the trial, Police Officer Jesus Borsalino of the Buenos Aires, Argentina Police Department, testified falsely before both the Court at a hearing and before the jury at the trial in chief.

These documents, which are certified copies of the official records of the Court, and most of which are reports issued by the Examining Federal Judge, Miguel Inchausti, demonstrate the following:

a) The date of the arrest of Francois Chiappe was May 15, 1968.

b) One Lucien Sarti, a co-defendant, was also arrested on May 15, 1968 in the same house where Chiappe was arrested when Chiappe's birthday was being celebrated.

c) That Francois Chiappe was in fact subject to torture during the days of May 15 and May 16, 1968, and that he still bore the physical evidence of this torture on May 27, 1968.

d) That Francois Chiappe did in fact complain to the Argentine Court of having been tortured.

e) That Francois Chiappe was held incommunicado for 10 days pursuant to his arrest on May 15, 1968.

f) That the robbery case against Mr. Chiappe was provisionally dismissed on February 26, 1969 when he was released from prison.

g) That the moneys seized from Mr. Chiappe and his wife at the time of arrest, along with a plaid hat and a pair of shoes were returned to Mrs. Chiappe.

h) That the $19,000.00 in U.S. currency was returned to Mrs. Chiappe because she proved to the Federal Judge that she had been legitimately in possession of it.

All of the above facts were either not mentioned by the witness Borsalino, or were affirmatively denied by him during his testimony. Furthermore, cross-examination on some of these points was precluded by the Court since counsel could not demonstrate a good-faith basis for the asking of these questions. The jury was further instructed to draw no inferences from the asking of the questions.

II. THE DOCUMENTS WERE KNOWN TO THE PROSECUTOR AND WERE SUPPRESSED

During the course of the hearing held during the trial, it was brought out by Judge Nikleson that the file in question was examined by Mr. Schlam, the Assistant United States Attorney who prosecuted this case, together with Judge Nikleson in Buenos Aires, Argentina (766-69).* Assistant U.S. Attorney Peter Schlam also stated on the record that he personally examined the robbery case file in Argentina (740-41). In fact, several exhibits removed from the file were introduced into evidence during this trial through the testimony of Police Officer Borsalino, specifically a false passport and identification card, several photographs, and a photograph of the $19,000.00 in U.S. currency allegedly seized from Mrs. Chiappe at the time of the arrest.

Clearly, the prosecutor was aware of the contents of the robbery case file, having examined it in the presence of an Argentine Federal Judge, and having selectively removed several items from it for presentation into evidence at the trial.

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*All references are to the transcript of the trial.

It is equally clear that there was a specific request for the materials in the Argentine robbery file. This request was made not only by Mr. Chiappe's trial counsel (840, 982, 983), but also by the presiding judge himself (836, 840). No records were ever produced by the Assistant U.S. Attorney, and the cross-examination of Police Officer Borsalino and Judge Nikleson resumed without them both at the hearing and at the trial in chief.

Significantly, the defendant Francois Chiappe testified at the hearing that the arrest took place on May 15, 1968, his birthday, that he was tortured for two days by means of electricity at which time Borsalino was present, that he had complained of the torture to the Argentine Court, and that he did not consent to any search.

Because the Court did not credit any of the testimony of defendant Chiappe, and did credit the testimony of Police Officer Borsalino, the evidence was admitted into evidence, and Borsalino was permitted to testify before the jury.

In cases where suppression of evidence has been deliberate or where there was a failure to disclose evidence whose high value to the defense could not have escaped the prosecutor's attention, the Courts have uniformly held that a new trial should be granted since almost by definition the evidence is material. United States v. Keogh, 391 F.2d 138 (2d Cir. 1968). It is further settled that the suppression of evidence by the prosecution favorable to the accused upon request violates due process where the evidence is material either to guilt or to punishment irrespective of the good faith or bad faith of the prosecution. Brady v. Maryland, 373 U.S. 83 (1963)*.

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*The third category of cases outlined by the Keogh Court, where suppression was not deliberate, and there was no request, does not apply to the facts of this case.

The request in this case was very specific, and was made not only by trial counsel, but by the Court itself. The prosecution knew of the defense's request. Since it failed to honor this even in good faith, it has only itself to blame.

It is further submitted that in this case the prosecution remained silent and allowed Police Officer Borsalino to give deliberately false testimony before the Court and the jury, and failing to correct it. Having examined the file in Argentina in the presence of a Federal Judge, the fact of the torture of Chiappe and the date of the arrest, as well as the return of the $19,000.00 and the reasons for it, could not have escaped the attention of the prosecutor. What happened in this trial is tantamount to the practices condemned by courts as incompatible with the rudimentary demands of justice. Giglio v. U.S. 405 U.S. 150 (1972). See also U.S. v. Napue, 360 U.S. 264 (1959); and U.S. v. Seijo, 514 F.2d 1357 (2d Cir. 1975).

Borsalino's deliberate, false denials of facts which the prosecutor knew--or should have known--were false and which he did not take steps to correct, effectively forclosed defense counsel's inquiry into these sensitive areas.

Not only were the deliberate falsehoods of P.O. Borsalino not corrected by the prosecutor, resulting in his repetition of the same before the jury, but by failing to produce the file as requested by defense counsel and the Court, counsel and the Court were precluded from impeaching the witness and bringing out his false testimony. It is submitted that for this reason alone, defendant is entitled to a new trial. The verdict is not saved because other competent evidence would support it. Columbe v. Conn. 367 U.S. 56 (1961) cited with approval in U.S. v. Agurs, 96 S.Ct. 2392 (1976).

III. THE EVIDENCE SUPPRESSED WAS MATERIAL

Under the Brady holding, a finding of materiality of the evidence is required. The Courts have uniformly held that when the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence relating to credibility rather than substance falls within the rule. A new trial is required if "the false testimony could...in any reasonable liklihood have affected the judgment of the jury..." Napue, supra, at 271. As the Napue Court stated at page 269:

> "The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend."

See also U.S. v. Gerard, 491 F.2d 1300 (9th Cir. 1974), U.S. v. Puco, 338 F.Supp. 1252 (S.D.N.Y. 1974) aff'd. 461 F.2d 846, aff'd. 493 F.2d 1399 (2d Cir. 1974), Corpus v. Beto, 469 F.2d 953 (5th Cir. 1973). U.S. v. Badalmante and Yagid, 507 F.2d 12 (2d Cir. 1974). See also ABA Standards for Discovery and Procedure Before Trial §2.1 (1970); ABA Standard Relating to the Prosecution and Defense Function §3.11 (1971).

The significance of the documents just received from the Argentine file is evident on their face. Their importance as tools for impeachment is inescapable, and their importance to the defense could not have escaped the prosecution.

Without the testimony of Police Officer Borsalino, it is highly doubtful whether Chiappe would have been convicted at all. The testimony of the informant and co-conspirator , Michel Nicoli, was highly suspect and subject to serious attacks on cross-examination. Hence, it became imperative to bolster his testimony with an unimpeachable source, which the government presented in the form of Police Officer Borsalino. Through his testimony some of the most devastating items of evidence were put before the jury, such as a false I.D. card, a false passport, photographs, and the $19,000.00 in U.S. currency which the prosecutor was permitted to argue to the jury as having been the proceeds of the last narcotics transaction testified to by Nicoli*.

Had it been possible to attack the credibility of Borsalino and demonstrate his deliberate false testimony--which was impossible without these documents--the jury would have disregarded his testimony in its entirety. The showing of the lack of credibility of a Police Officer, of course, would cause Nicoli's testimony to be that much more suspect.

This case does not involve the issue of whether additional evidence tending to further impeach the credibility of a witness whose character and credibility have already been shown to be questionable was withheld. See U.S. v. Rosner, 516 F.2d 269 (2d Cir. 1975). The Courts have held, however, that despite the presence of other impeaching material available to a jury, where further material affecting a witnesses credibility may have created sufficient doubt in a jurors' mind, nondisclosure deprived the defendant of a fair trial. U.S. v. Seijo, 514 F.2d 1357 (2d Cir. 1975); U.S. v. Kaplan, 470 F.2d 160 (7th Cir. 1972). Here there was no basis for impeachment whatsoever at the time the witness testified since the file was not made available. Additionally, the jury was specifically instructed by the Court on numerous occasions that the mere asking of a question was not evidence of anything, and that no adverse inference may be drawn from the asking of a question and its denial by the witness. Moreover, trial counsel was precluded from inquiring into these areas because he had not established any good faith basis for asking the questions.

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*It is our position that the newly received documents may well have effected the Court's decision to premit this post-conspiracy evidence at all, since it is now demonstrated that the $19,000.00 was legitimately Mrs. Chiappe's, not as the prosecutor stated in his offer of proof, the proceeds of a drug transaction. In any event, it is our position that the error in admitting this evidence is now exacerbated.

The end result was that a distinguished looking gentlemen in a crisp uniform, who had 25 years of experience and was now a commanding officer was permitted to give totally unimpeachable testimony and was permitted to deny facts which have now been proven false. Yet, because the date of arrest was not the 17th but rather the 15th of May, 1968, and because of the demonstrable torture of Chiappe, the jury was not permitted to consider his deliberate lies and the strong motive he had to lie, having been one of the persons involved in the torture of Chiappe on May 15 and 16, 1968. Not only did the suppressed evidence demonstrate the deliberate falsehoods and motive to lie, but it would have rendered the uncorroborated substance of his remaining testimony suspect, such as the consent to search, the alleged statements of Mrs. Chiappe, and the finding of the I. D., passport, photograph, and the $19,000.00. The jury simply did not have all the facts before them and were effectively misled in evaluating his testimony.

IV. THE DEFENDANT WAS PREJUDICED

The prosecutor was duty bound to produce the file before the trial. Certainly, he was obligated to produce it when it was specifically requested. The purpose of this duty is not simply to correct an imbalance of advantage, where the prosecution may surprise the defense at trial with new evidence, as it happened in this case. Rather, it is also to make a trial a search for the truth informed by all relevant material, much of which, because of the imbalance in investigative resources, will be exclusively in the hands of the government. See *U.S.* v. *Bryant*, 439 F.2d 642 (DC Cir, 1971). Such disclosure must be made at such a time as to allow the defense to use the favorable material effectively in the preparation and presentation of its case. *U.S.* v. *Pollack*, 534 F.2d 964 (D.C. Cir, 1976).

The facts of this case further exacerbate the lack of timely disclosure. Here we are dealing with the contents of a file located in an Argentine Court thousands of miles away. Present counsel for Mr. Chiappe has had to depend on others to look through this file and search for specific materials to answer my specific questions. Counsel can scarcely wonder what other materials may be contained in this file of over 300 pages of potential value, which could have been skillfully developed at trial.

It is curious indeed, that the prosecutor in this case went through the enormous expense of, among other things, bringing an Argentine Judge and Police Officer to testify at the trial, but chose not to bring along a file whose production is mandated not only by due process, but by the direction of Rule 16 Federal Rules of Criminal Procedure and 18 U.S.C. §3500.

Because of the deliberate suppression of the evidence, and the failure to produce it when specifically requested by trial counsel and the Court, the defendant was denied a fair trial. Without the materials since received, effective cross-examination--indeed, *any* cross-examination--of Police Officer Borsalino was effectively precluded.

In cases of nondisclosure of *Brady* material, especially where it may have been occasioned by prosecutorial misconduct, Appellate Courts have often taken a prophylactic approach such as the comments of Judge Friendly in his concurrence and dissent in U.S. v. Morell, 524 F.2d 550 (2d Cir. 1975); see also Woodcock v. Amaral, 511 F.2d 985 (1st Cir. 1974).

Francois Chiappe complains that his trial did not have the fundamental fairness he was entitled to under due process of law. Here, the basic unfairne[illegible]as occasioned by the prosecutor's failure to produce the court file from Argentina, even after it was specifically requested, and his taking a hear-no-evil, see-no-evil, speak-no-evil attitude toward a major witness in the case, who testified falsely.

To label this suppression intentional or negligent is unnecessary. It is enough that the proseuction was the active and effective cause of the nondisclosure of the evidence. Moreover, the request was, after all, for discovery which was basic and not extraordinary. Yet, in all probability, had the evidence been available, Mr. Chiappe would not be in the position he finds himself in today.

CONCLUSION

For the above-stated reasons the motion for a new trial should be granted.

DATED: New York, New York
March 1, 1977

Respectfully submitted,

JURIS G. CEDERBAUMS
Attorney for Defendant
30 Broad Street
New York, New York 10004
(212) 425-1060

This certification appears on each page of the documents.

CERTIFICO QUE LA PRESENTE ES
COPIA FIEL DEL ORIGINAL OBRANTE A
FS 325.......DE LA CAUSA Nº 717/1.970
CONSTE.-

Juzgado Nacional de 1a Instancia en lo Criminal y Correccional Federal No. 4
DE LA CAPITAL FEDERAL

JULIO R. [illegible]
SECRETARIO

Mr. Juris G. Cederbaums
Office of
Dr. Gino E. Gallina
30 Broad Street
NEW YORK 10004
U.S.A.

De mi consideración:

Le remito adjunto copia certificada de las siguientes piezas judiciales:

1) informe médico forense acerca de lesiones que presentaba el procesado Lucien Sarti;

2) informe del comisario Rossi, del 15 de mayo de 1976;

3) parte de la declaración de Chiappe, en la que éste denuncia haber sufrido torturas durante la dentención policial;

4) parte de la declaración de Sarti, en la que éste señala que el día de su detención se encontraba en la casa de Chiappe porque era el cumpleaños de éste (Chiappe cumple años el 15 de mayo);

5) resolución del 24 de mayo de 1968, en la que se dispone el examen médico de Chiappe acerca de los malos tratos denunciados por ´este; en esta misma resolución se levanta la incomunicación el 24 de mayo de 1968, es decir, exactamente diez días a contar del 15 de mayo; es precisotener presente que para la ley argentina la incomunicación no puede exceder de 10 días;

6) notificación del 24 de mayo de 1968, al comisario del Palacio de Justicia, del levantamiento de la incomunicación de Chiappe;

7) informe médico forense acerca de las lesiones que presenta Chiappe;

8) ejemplar periodístico del 28 de mayo de 1968;

9) declaración de Lucien Sarti, del 6 de junio de 1968.

325
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①

Poder Judicial de la Nación

Buenos Aires, 6 de junio de 1968.-

Sr. Juez Nacional enlo
Criminal y Correccional Federal
Dr. MIGUEL A. INCHAUSTI
Sec. Rivarola
Causa Nº 717/68:

En razón de lo dispuesto por V.S. hemos examinado en el día de la fecha en la Alcaidía del Palacio de Justicia al detenido LUCIEN SARTI, a fin de informar a ese Juzgado sobre las lesiones que presenta de acuerdo con las prescripciones legales.-

Dice ser francés, de 30 años de edad, casado y que el 15 y 16 de mayo de 1968, en el Departamento Central de Policía le aplicaron electricidad en todo el cuerpo.-

Al examinarlo hemos comprobado en la cara anterior de la muñeca, borde cubital, a 1 cm. por arriba de la articulación, una escoriación recubierta por costra hemática, de 2 mm. de diámetro.-

Informamos a V.S. que dicha lesión ha curado en unos 10 días, sin determinarle inutilidad para el trabajo.

Mecanismo de producción: por roce con o contra cuerpo duro.-

Dios guarde a V.S.-

DR. RUFINO JOSE MARIA SOLA Y PAZ
MÉDICO FORENSE
DE LA JUSTICIA NACIONAL

DR. RODOLFO J. FRAGA
MÉDICO FORENSE
DE LA JUSTICIA NACIONAL

O.L-6

En Buenos Aires, Capital Federal de la Nación Argentina, a los quince días del mes de mayo del año mil novecientos sesenta y ocho, siendo las horas trece, el funcionario que suscribe, Comisario ALEVI ELIO ROSSI, Jefe de la Sección Robos y Hurtos de la Policía Federal con la actuación del secretario que refrenda a los efectos legales, Oficial Principal JUAN ANGEL MASTIERI, hace constar: que con motivo de la concurrencia al país de dos funcionarios de la Policía francesa, requiriendo información sobre organizaciones delictivas integradas por delincuentes franceses en particular, con capturas recomendadas por diversas policiales europeas, se les hizo observar los identit-kit confeccionados sobre la base de las descripciones efectuadas por los empleados del Banco de la Nación, Sucursal Boedo con motivo del asalto perpetrado contra esa sucursal con fecha 19 de abril ppdo.- Previa observación de los dibujos, manifestaron que eran parecido uno de ellos con el delincuente francés FRANCISCO CHIAPPE, persona ésta capaz de cometer un delito de esa índole. Asimismo, déjase constancia que por conducto confidecial el señor Director de Investigaciones de la Policía de Montevideo, República Oriental del Uruguay, Inspector MAXIMO GUERRA hizo conocer al infrascripto que el sindicado por los policías franceses (FRANCISCO CHIAPPE), se domicillaría en la calle Bermúdez 3117 de esta Capital, con familiares. Con tales referencias y en posesión de fotografías suministradas por la Sección Interpol de esta Policía y que corresponden a los integrantes del grupo a que hicieron referencia los policías franceses, el suscripto puso en conocimiento de tales antecedentes al señor Juez Nacional de Primera Instancia en lo Criminal Correccional Federal Doctor MIGUEL INCHAUSTI, Secretaría del Dr. GUILLERMO F. RIVAROLA que interviniera con motivo del hecho mencionado ut-supra, quien dispuso se inicia-

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///ran nuevas actuaciones y se efectuarían reconocimientos fotográficos por parte del personal de la Sucursal Bancarias mencionada, sobre las fotografías de los delincuentes integrantes del grupo CHIAPPE. Atento a ello y a base de la presente acta, el instructor resuelve: iniciar nuevas actuaciones caratuladas ROBO, dando intervención al Magistrado mencionado y conocimiento en el orden administrativo al señor Jefe de la Policía Federal, con carácter reservado; agregar a lo actuado en concepto de 10 fojas útiles copia del parte sumarial elevado por la Comisaría 8a con motivo asalto sucursal Boedo del Banco de la Nación Argentina, como asimismo las fotografías de los delincuentes LUCIEN SARTI, DAVID CHRISTIAN, CLAUDE PASTOU, FELIX LESCA, LUCIEN RENE BAIS y FRANCISCO CHIAPPE, suministradas por la Sección Interpol; dirigir citación al personal de la Sucursal del Banco Nación para que efectúe el reconocimiento, prosiguiéndose demás diligencias. Conste.-

JUAN ANGEL MASTIERI
OFICIAL PRINCIPAL

ALEVI ELIO ROSSI
COMISARIO
JEFE SECCION ROBOS Y HURTOS

En///

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USO OFICIAL

Poder Judicial de la Nación

//Bonial": que posteriormente estuvo en la resistencia como "maqui": que ha participado en combates, que ha sido herido y ha estado prisionero. Preguntado por S.S. si tiene algo que agregar sobre lo que ha declarado manifiesta: Que no tiene nada que ver en el asalto del Banco de la Nación. Quiere hacer constar que en el Departamento Central de Policía ha sido sometido a apremios ilegales, exigiéndosele que declarara su participación en el asalto; que lo han tenido dos noches desnudo y que le han aplicado en todo el cuerpo corriente eléctrica. que en el cuerpo no tiene marcas pero si en los tobillos y en las muñecas, las que exhibe en este acto. No siendo para más S.S. dió el acto por terminado previa lectura que de la presente se dió en alta voz, se ratificó el compareciente y firmó en todas sus fojas, al igual que el letrado defensor y el Sr. Procurador Fiscal presentes ambos en la audiencia, todo ello por ante mi; y después de S.S. de lo que doy fe.- S.R."Palace" y "lo" y E.L."lo"VALEN.-

MIGUEL A. INCHAUSTI
JUEZ FEDERAL

GUILLERMO E. ENVARCIA
SECRETARIO FEDERAL

BEST COPY AVAILABLE

(4)

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MIGUEL A. INCHAUSTI
JUEZ FEDERAL

///cuanto a las fotografías de fs. 119 que se le exhiben, manifiesta descono[illegible]r la persona que se le muestra. Exhibida que le fue la fotografía de fs.166 manifestó el procesado que el individuo identificado con el Nº 4 se trata de FRANCISCO CHIAPPE, y el primero de la derecha de la foto identificado con el nº 2 se trata del indicado DOS SANTOS, en cuanto a la niña que aparece en la foto se trata de la hija de CHIAPPE. Exhibida que le fue la foto de fs.179 manifestó que se trata del vehículo Chevrolet de su propiedad, el cual identifica por el número de chapa. Exhibida que le fue la foto de fs. 183, manifestó que se trata de su señora LILIANA MARIA ROUS. Exhibida que le fue la foto de fs.184, respondió que desconoce de que persona se trata; en cuanto a la foto de fs. 185 indica el procesado que se trata del mencionado DOS SANTOS. Exhibida que le fue la foto de fs. 192 indicó el procesado que reconoce en el individuo señalado con el Nº 1 a FRANCISCO CHIAPPE; que la mujer que se encuentra a su lado es la madre de la mujer

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de CHIAPPE; que la mujer que se encuentra al lado de esta última cree el declarante se trata de la mujer de CHIAPPE; que desconoce quienes son las demás personas que aparecen en esa foto; en cuanto a la fotografía de fs.193 indica que el señalado con el Nº 2 es CHIAPPE, desconociendo a la otra persona que aparece en esa foto; respecto de la foto de fs. 196 señala el declarante que se trata de la fachada de su domicilio en Acassuso. Exhibida que le fue la foto de fs. 231, indicó que le parece que se trata del indicado DOS SANTOS. A nuevas preguntas indica: que se casó legalmente con su actual esposa hace unos once años en Francia; que ni ella ni el declarante tienen parientes en la Argentina; que ni el declarante ni su esposa tienen parientes en el Uruguay. Que se ha enterado del asalto del mes pasado al Banco de la Nación por los diarios; que no recuerda el día en que ocurrió el asalto; que posiblemente se ha de haber enterado en su casa que es donde recibe el diario. Que el declarante usualmente no se levanta temprano; que supone que se enteró del asalto por el diario "Clarín", aunque no puede precisar si pudo ser por algún diario de la tarde porque no re-

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///cuerda en que momento dió órdenes de que no le trajeran diarios de la tarde: aclara que no sabe bien si el diario que ordenó que no le trajeran era de la tarde o de la mañana, pero sí se acuerda que pidió que le trajeran únicamente "Clarín"; que no recuerda que es lo que hizo el día del asalto. Que no conoce a nadie que pueda estar vinculado al asalto. Qué no sabe donde está la esposa del declarante. Que en Acassuso el declarante puede haber tenido doscientos o trescientos mil pesos. Que cuando fue detenido el declarante tenía en su poder tres mil seiscientos dólares. Que esa plata la tenía en su poder para cambiarla por dinero argentino y ponerlo en hipoteca; que el cambio pensaba hacerlo en alguna oficina de cambios de calle Corrientes o de calle Córdoba; que recuerda haber hecho cambio de dólares en una casa de cambio de la calle Córdoba, pasando calle San Martín y en el sentido ascendente de la numeración y a la derecha, no recordando que suma cambió; que de los dólares que trajo al volver de España le restan aproximadamente doce mil; que además de la suma que trajo originariamente, en el Uruguay el señor BRANDI le entregó ocho mil dólares producto de inversiones del dicente en europa; pero que el saldo actual que le resta es la suma de doce mil dólares que ya mencionó. Que los gastos grandes que ha hecho en este país resultan de la compra del yate "Antibes", de la compra del "Torino" y de la compra del "Chevrolet". Que del saldo explicado, tres mil seiscientos estaban en poder del deponente cuando lo detuvieron, y el resto estaban en su domicilio de Acassuso, suponiendo el declarante que los tiene su esposa. Que la conversión de dólares a pesos argentinos proyectaba hacerla para llevarla a algún Banco para hipotecas, y que no tenía pensado en que Banco haría la inversión, que nadie le aconsejó la operación y se le ocurrió al dicente al leer la propaganda en los diarios, cree que era la del Banco de Galicia. Preguntado el declarante para que diga por que razón concurrió a la casa de CHIAPPE el día de su detención, respondió: que porque en esa fecha CHIAPPE celebraba su cumpleaños y como el dicente lo había llamado dos días antes para saludarlo, [illegible] ///

MIGUEL A. INCHAUSTI
JUEZ FEDERAL

///le manifestó que pasara por su casa, lo que así hizo. Preguntado para que diga si se ha domiciliado en la Av. del Libertador 2368 tal como figura en la póliza de seguros del crucero "Antibes", respondió: Que nunca ha sido suyo ese domicilio, pensando que tal vez corresponde al anterior propietario de la mencionada embarcación. Que el pasaporte que consiguiera en España expedido a su nombre, lo conservaba el declarante en su domicilio hasta la fecha de su detención, habiendo exhibido ese documento ante las autoridades argentinas para poder ingresar a la República Argentina. Que cuando suscribió el correspondiente contrato de locación con relación a la casa que habitaba en Acassuso, lo hizo con el nombre de LUCIANO SANCHEZ, exhibiendo para justificar identidad; aclara en este acto que en realidad no recuerda si se le exigió justificar identidad pero si esta completamente seguro que el contrato se hizo a nombre de LUCIANO SANCHEZ. Preguntado para que diga si CHIAPPE ha concurrido a su domicilio particular, respondió que nunca lo hizo. Preguntado el declarante para que diga si tiene una funda de color bordó de unos cuarenta centímetros de largo de formato alargado, respondió que no tiene lo que se le pregunta. Preguntado si en alguna oportunidad ha dejado de concurrir a su domicilio por algunos días, respondió que no lo ha hecho. Agrega a nuevas preguntas que el día franco de la mucama que se desempeñaba en su domicilio de Acassuso era el domingo durante toda la jornada. Preguntado para que diga si ha recibido en su domicilio de Acassuso a personas llamadas Patricia, y Gina o bien Regina, respondió que no. Que el departamento de Coronel Diaz está pago hasta fines de junio ó julio del año en curso; que después de vivir en Acassuso, el dicente vino algunas veces al departamento de Coronel Diaz pues todavía recibe cartas de España y de Francia en el mismo; que no tiene ropas ni de él ni de su esposa en el departamento mencionado; que el departamento tiene teléfono, el que se paga por mitades entre la dueña y el declarante; que el número de teléfono es 88-4129.- Que en Acassuso tienen teléfono y que el número es 743-2266. A nuevas preguntas responde que no conoce a ninguna persona que respon-

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USO OFICIAL

Visto

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///de el nombre de POUPULE; que ha conocido hace unos cinco meses atrás a una chica de unos 18 años de edad que respondía al nombre de RAQUEL ignorando su apellido, que a esta chica la conoció en la calle habiendo salido una sola vez con ella sin volverla a ver hasta el presente; que conoce también a RAQUEL BERVICATO la que se domicilia en Saenz Valiente 1149, domicilio al cual concurrió el declarante algunas veces; que a la nombrada en último término el declarante no le ha entregado dinero alguno. Que RAQUEL BERVICATO esta casada con MIGUEL RUSO, que es joyero, y que la joyería le parece que está en Plaza San Martin, pero el dicente nunca ha ido a la misma. A otras preguntas responde que el declarante ha luchado en Argelia entre 1957 y 1960, que ha peleado en el Congo entre 1964 y 1965, en la primera oportunidad con aspirante y en la segunda con el grado de Teniente. Que ha participado en combates en forma activa, utilizando armas de fuego; que no puede decir que haya visto caer enemigos como resultado del uso de las armas por parte del dicente, pero ha participado en muchas operaciones de guerra; que ha manejado armas de guerra durante la guerra y que hace tres o cuatro años que ha dejado de hacerlo, pues a la fecha maneja armas de caza porque le gusta cazar. Que con su señora salen poco según ya lo ha dicho, concurriendo alguna vez al cine; que al declarante le gusta leer, leyendo en castellano solamente diarios y alguna revista, y en cuanto a libros lee en francés; que cuando vino trajo libros y que suele comprar en la librería de la Alianza Francesa ubicada en calle Córdoba; A nuevas preguntas dice tener conocimiento de que es buscado por la policía de Bélgica, ya que se le imputa haber cometido ò de haber tenido alguna intervención en el homicidio de un policía de esa nacionalidad, suceso que el declarante desconoce. Que no tiene más nada que agregar, salvo que el trato en el Departamento de Policía fue correcto para con el dicente. No siendo para más se dió por terminado el acto y previa lectura que de la presente dió el Actuario en alta voz se ratificó y firmó el declarante por ante mi y después de S.S. de lo que doy fe.- Lo testado "legítimo", "España" NO VALEN. Entre líneas

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Poder Judicial de la Nación

///"z" VALE. -S.R."belga" VALE.-

MIGUEL A. INCHAUSTI
JUEZ FEDERAL

SECRETARIO FEDERAL

Buenos Aires, Mayo 24 de 1968.-

✓No siendo necesario continuar con la incomunicación que pesa sobre los detenidos FRANCISCO CHIAPPE y LUCIEN SARTI ó LUCIANO SANCHEZ, levántese la misma, librándose despacho telegráfico a la Alcaidía del Palacio de Justicia, en la forma de práctica.

✓Ofíciese al cuerpo médico forense solicitando se proceda a examinar al detenido FRANCISCO CHIAPPE, informándose a éste Juzgado sobre las lesiones que pudiera presentar, origen de las mismas, mecanismo de producción, tiempo de curación, etc., de acuerdo con las prescripciones legales.-

✓Cítese a prestar declaración testifical en primera audiencia, FRANCISCA MARTINEZ de TISERA ✓(fs.199 y sigs.).-

✓Por considerárse conveniente y necesario al mejor éxito de la investigación que se practica, prorrógase-- por el término de ley, el secreto de éstas actuaciones (art.180,Cód.Proc.Crim.) en consecuencia, hagase saber ésta providencia al Superior, mediante oficio.-

MIGUEL A. INCHAUSTI
JUEZ FEDERAL

USO OFICIAL

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///// la misma fecha se citó y se libró despacho levantando l
incomunicación de los detenidos. CONSTE.-

GUILLERMO F. RIVAROLA
SECRETARIO FEDERAL

En igual fecha se oficio al cuerpo médico forense. CONSTE.-

GUILLERMO F. RIVAROLA
SECRETARIO FEDERAL

INISTERIO DEL
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INCHAUSTI -
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MINISTERIO DEL INTERIOR

Nº 257/

POLICIA FEDERAL

E: INCHAUSTI - RIVAROLA

H. H. R. Fecha 24-5-68

OLICÍA Comisario Palacio de Justicia Empl.

ES COPIA

Por orden de S.S. me dirijo a Ud. en sumario nº 717/68 instruido por el delito de robo en perjuicio del Banco de la Nacion Argentina, a fin de que se levante la incomunicacion de los detenidos FRANCISCO CHIARPE y LUCIEN SARTI ó LUCIANO SANCHEZ. Saludo a Ud. atte.

GUILLERMO B. RIVAROLA
SECRETARIO FEDERAL

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Poder Judicial de la Nación

Buenos Aires, 27 de mayo de 1968.-

Sr. Juez Nacional en lo
Criminal y Correccional Federal
Dr. MIGUEL A. INCHAUSTI
Sec. Rivarola
Sumario Nº 717/68:

En razón de lo dispuesto por V.S. en la fecha hemos examinado en la Alcaidía del Palació de Justicia, al detenido FRANCISCO CHIAPPE, francés, de 48 años de edad, casado, a fin de informar a ese Juzgado de acuerdo con las prescripciones legales.-

Refiere que el día 15 de mayo último, hallándose en un calabozo de la Jefatura de Policía, le vendaron los ojos y colocándolo sobre una mesa de espaldas, le ataron ambas muñecas y ambos tobillos, quedando fijo y luego de mojarle todo el cuerpo le aplicaron electricidad por todo el cuerpo. Agrega que él no podía verlos pero que se dió cuenta que eran varios.-

En nuestro examen comprobamos:

a) Que en el pie izquierdo, en su cara interna, presenta una excoriación circular de 5 mm. de diámetro y edema de la garganta del pié.-

b) Que el pie derecho se halla igualmente edematizado.-

c) En la muñeca izquierda, en su región dorsal, presenta una herida costrosa de 2 x 1 cm.-

d) En la misma muñeca, en su cara palmar, dos excoriaciones de 10 y 5 mm. respectivamente.-

///.

///.

e) En el dorso de la muñeca derecha, una excoriación lineal transversal de 15 mm.-

En el resto del cuerpo, aparte de varias cicatrices antiguas que presenta, algunas de ellas recibidas durante la última guerra mundial en la que fué combatiente durante cinco años, no hemos comprobado la existencia de lesiones recientes de ningún tipo, ni tampoco rastros de ellas.-

Las lesiones anteriormente descriptas, que bien pudieron ser producidas según el mecanismo señalado por el procesado, curarán entre 15 y 20 días, sin inutilizarlo para el trabajo y no le dejarán ninguna de las secuelas a que se refieren los artículos 90 y 91 del Código Penal.-

Dios guarde a V. S.-

DR. DOMINGO ELICEGUI
MEDICO FORENSE
DE LA JUSTICIA NACIONAL

Recibido en esta Secretaría hoy 27 de Mayo de mil novecientos sesenta y ocho siendo las 17.45 horas.
CONSTE.-

0.27-5

[illegible]

8

93

[illegible], [illegible], con domicilio [illegible] 1717-[illegible]

[illegible] entregada a personal de esta Sección por el [illegible] CONTRALOR de "[illegible] Buscadores o Interpol" de la [illegible]video-R.O. del Uruguay.-

Se procedió a comisionar personal a la calle [illegible] Capital Federal, pudiéndose constatar se trata [illegible] la fábrica de muebles, denominado "Riochi"-pro[illegible] [illegible], la que desconocía todo lo relaciona[illegible] [illegible], no aportando dato de interés alguno.-

Saluda a S.S. muy atte

[illegible] en esta Secretaría hoy 4 de Junio [illegible]ños sesenta y ocho siendo las 16 horas.

BEST COPY AVAILABLE

8

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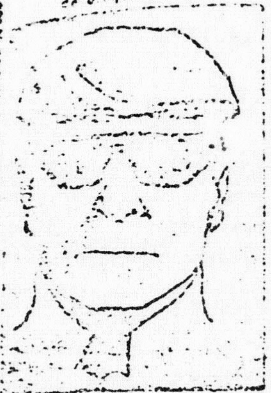
28 MAY 1968

[illegible] a Conocer Pormenores de la Pesquisa que [illegible] Apresar a Dos Famosos Delincuentes Franceses a [illegible] se Sospecha Autores del Asalto al Banco Nación

[illegible] la policía sólo sospecha que los detenidos parti[illegible] del atraco a la sucursal [illegible] del Banco Nación y se [illegible] a lo que pueda averiguar y decir el juez. Entretanto, se describió un panorama alucinante del tráfico internacional de drogas, con personajes muy conocidos y desconcertantes.



[illegible] en el [illegible] a las declaraciones de sus [illegible]

El [illegible] François Chiappe, fotografiado en el Departamento de Policía al ser detenido

M. Naval, esposa del aventurero francés F. Chiappe

[illegible] el Departamento Central de [illegible] una conferencia de prensa, que [illegible] Buenos Aires y que [illegible]

EL TIEMPO

TEMPERATURA MINIMA

5°7 .... a las 7.10

TEMPERATURA DE LAS 12

15°3

[illegible]

PRONOSTICO

[illegible]

MAR DEL PLATA: [illegible]

BARILOCHE: [illegible]

CORDOBA: [illegible]

MENDOZA: [illegible]

LA PRUEBA

MONTEVIDEO [illegible] — En [illegible] Marie [illegible], francesa de [illegible] años, [illegible] que realiza la policía de esta capital para esclarecer en forma definitiva el controvertido "affaire" de los delincuentes franceses con antecedentes [illegible] en el Río de la Plata. [illegible] en Montevideo, pero fue dejada posteriormente en libertad al no poseerse pruebas para procesarla. [illegible] Buenos Aires [illegible] y François Chiappe [illegible] del asalto contra la sucursal [illegible] del Banco de la Nación Argentina, que les reportara la suma de 65 millones de pesos a [illegible]

[illegible] El nivel de los detenidos [illegible] ver con el asalto a la sucursal [illegible] del Banco Nación [illegible]

—¿Qué piensa la policía de [illegible] autores del banco?

—Me remito a lo expresado [illegible]. No obstante, la resonancia internacional del procedimiento es indudable.

—¿Usted no cree que haber [illegible] la incomunicación a los detenidos, que están en Villa Devoto, reduce las posibilidades de la investigación?

—Pienso que sí. Pero eso está dispuesto por el Código de Procedimientos.

—¿Por qué cree que Sarti reconoció su participación en el asalto al Banco y Chiappe no?

—[illegible] De todos modos, la justicia es la que dirá si son o no son. Pensamos que son coincidencias [illegible]

—El [illegible], señalado por la policía, tendría que ver con los franceses y con el asalto al Banco de la Nación?

—No está comprobado y los [illegible], lamentablemente, no hablan.

—¿Los franceses serían también autores del asalto a un [illegible] de la empresa [illegible] León, en el camino a Ezeiza?

—Parece un hecho de poca monta para lo que son ellos, pero no está descartado, porque en Montevideo se les conformó [illegible]

—El dinero que se les secuestró, [illegible] del negocio de las drogas y no del asalto al Banco Nación?

[illegible]

taba en condiciones de [illegible] un peligro para su [illegible]

[illegible] y María [illegible] de [illegible] a Marsella a cambio de 1.000 dólares por kilogramo de droga. [illegible]

Una denuncia

[illegible]

ne la misma,
Nacional de
ses limítro-
ser para ello
caso contrario
cuestión se
le extendió,
Nº 70 y la
aber ingresa-
es, pudiéndose
as de aviones
jeta y el
al que su nombre
epartamento
nada más pue-
revia lectura y
or ante mí; doy

///

///la audiencia del día seis de junio de mil novecientos sesenta y ocho, comparece ante S.S. y Secretario que autoriza una persona detenida en esta causa, a quien se le previno se le ampliaría su declaración indagatoria. No habiéndose opuesto al acto, fue interrogada a tenor del artículo doscientos cuarenta y uno del Código de Procedimientos en lo Criminal, manifestando llamarse: LUCIEN SARTI y ser de las demás condiciones personales que constan a fs. 247.- A preguntas formuladas por S.S. dijo: Que desea rectificar su declaración indagatoria en cuanto expresó que el trato recibido en el Departamento de Policía fue correcto. Que declaró en esa forma por cuanto temía que después de tal deposición fue remitido nuevamente a la citada repartición policial, ya que así se lo hizo saber el Director de la Sección Robos y Hurtos. Que la verdad de lo acontecido es que el día en que lo detuvieron y el siguiente fue sometido a apremios ilegales en el Departamento de Policía con el objeto de que confesara su participación en el asalto al Banco Nación y dijera que se llamaba Sarti, ya que su verdadero nombre es Luciano Sanchez. Que a tal efecto le vendaron los ojos y posteriormente lo pusieron sobre una mesa desnudándolo, para después aplicarle electricidad en todo el cuerpo, el que previamente habían mojado. Dichas torturas las sufrió varias veces en el término de dos días. Asimismo lo dejaron durante dos noches desnudo en la celda y esposado. Que los días a que se ha referido son el 15 y 16 de mayo ppdo. Que si bien, debido al tiempo transcurrido han desaparecido las marcas que dejaron en su cuerpo dichos apremios, creo poder tener lesiones internas ya que siento dolores en la parte abdomi- ////

///nal, como asimismo tiene insensibilidad en los testículos. Que debido a que el deponente tenía vendados los ojos en oportunidad de someterselo a los apremios referidos, le es imposible reconocer a las personas que intervinieron en los mismos. Quiere dejar nuevamente bien aclarado que su verdadero nombre es Luciano Sanchez, siendo sus demás datos personales dados al Juzgado correctos. Que nada más puede decir. Con lo que se dió por terminado el acto y previa lectura y ratificación firmó el compareciente junto con su abogado defensor que asistió al acto Dr. Roberto Eliosoff, después de S.S. por ante mi; doy fe.-

MIGUEL A. INCHAUSTI
JUEZ FEDERAL

Guillermo Rivarola
GUILLERMO F. RIVAROLA
SECRETARIO FEDERAL

Buenos Aires, Junio 6 de 1968.-

Ofíciese al cuerpo médico forense solicitando se examine al procesado Luciano Sanchez ó Lucien Sarti, informando sobre las lesiones que pudiera presentar, origen de las mismas, mecanismo de producción, tiempo de curación, etc., de acuerdo con las prescripciones legales.-

MIGUEL A. INCHAUSTI
JUEZ FEDERAL

En igual fecha se ofició. Conste

Poder J

AL SEÑO
S/D.

en la
en su
ra Inst
Secret
quiera
tenido,
france
gado s
tiempo
cripci

MR. JURIS G. CEDERBAUMS
Office of
Dr. Gino E. Gallina
30 Broad Stree
New York 100
U.S.A.

Dear Sir,

I am enclosing certified copies of the following official records:

1. Forensic medical report on injuries shown by the defendant Lucien Sarti;

2. Report from Commissioner Rossi dated May 15, 1976;

3. Portion of Chiappe's statement in which he reports having undergone torture while in police custody;

4. Portion of Sarti's statement in which he indicates that on the day of his arrest he was at Chiappe's house because it was the latter's birthday (Chiappe's birthday is on May 15th).

5. Resolution dated May 24, 1968 ordering a medical examination of Chiappe relative to the report he made of having been mistreated. The same resolution orders the termination of the state of incommunicado as of May 24, 1968, that is, exactly ten days after May 15th. It must be noted that according to Argentine law the state of incommunicado may not exceed 10 days.

6. Notification dated May 24, 1968 to the Commissioner of the Court House on the termination of the state of incommunicado.

7. Forensic medical report on the injuries shown by Chiappe.

8. Newspaper clipping dated May 28, 1968.

9. Lucien Sarti's statement dated June 6, 1968.

(Signature)

JUDICIAL BRANCH OF THE NATION

Buenos Aires, June 6, 1968

National Judge in the
Federal Criminal and Correctional Section
DR. MIGUEL A. INCHAUSTI
Rivarola, Secretary

Case No. 717/68

Pursuant to your order, on this date we have examined the defendant LUCIEN SARTI in the detention cells of the Court House in order to report to the court on the injuries shown by the defendant, in accordance with the legal provisions.

He stated that he is French, 30 years old, married and that on May 15 and 16, 1968 electricity was applied throughout his body at the Police Headquarters.

The examination revealed an abrasion covered by a scab 2 mm. in diameter on the top part of the wrist cubital edge, one centimeter above the joint.

We inform you that that injury healed in about 10 days and did not incapacitate him for work.

Cause of injury: Rubbing with or against a hard object.

God Keep You,

(Signature)
DR. RUFINO JOSE MARIA SOLA Y PAZ
Forensic Doctor
National Justice Department

(Signature)
DR. RODOLFO J. FRAGA
Forensic Doctor
National Justice Department

In Buenos Aires, Federal Capital of the Argentine Nation, on May 15, 1968, at 1:00 P.M., the undersigned, Commissioner Alevi Elio Rossi, Chief of the Robbery and Theft Section of the Federal Police, in the presence of the Secretary who duly certifies, the Chief Officer Juan Angel Mastieri reports that: Two officers of the French police came to this country to request information on criminal organizations made up of French criminals, in particular, who are wanted by various European police forces. They were shown some composites made from the descriptions given by the employees of the Banco de la Nacion, Boedo Branch, after the hold-up that took place at that branch on last April 19th. After examining the composites they said that one of them looked like the French criminal FRANCOIS CHIAPPE, an individual capable of committing a crime of that sort. Furthermore, it must be recorded that the Director of Investigations of the Montevideo Police, Eastern Republic of Uruguay, Inspector Maximo Guerra, confidentially informed the undersigned that the individual picked out by the French police officers (FRANCOIS CHIAPPE) should be residing at 3117 Bermudez Street in this capital, with relatives. With this information and in possession of the photos supplied by the Interpol Section of this police force, of the members of the group referred to by the French police, the undersigned advised the Hon. National Judge of First Instance for the Federal Criminal and Correctional Section, Dr. Miguel Inchausti, Secretary's Office of Dr. Guillermo F. Rivarola, to

-2-

intervene with reference to the above matter. He then ordered that investigations be conducted and that the personnel of the said bank branch be asked to identify the photographs of the criminals that constituted the CHIAPPE group. Pursuant to such order and based on this official report the examining officer resolves: To initiate new investigations under the heading ROBBERY with the intervention of the said judge and to keep the Chief of the Federal Police informed, for administrative purposes, in a confidential manner.

Incorporate into this record the copy of ten pages of the official record of the summary proceeding instituted by the 8th Precinct after the hold-up that took place in the Boedo Branch of the Banco de la Nacion, as well as the photographs of the criminals LUCIEN SARTI, DAVID CHRISTIAN, CLAUDE PASTOU, FELIX LESCA, LUCIEN RENE SANS and FRANCOIS CHIAPPE, which supplied by the Interpol Section.

Issue an order to the personnel of the Banco Nacion Branch to proceed to the identification.

Conduct further investigations.

OF RECORD.

(Signature)

JUAN ANGEL MASTIERI
Chief Officer

(Signature)

ALEVI ELIO ROSSI
Commissioner
Chief of the Robbery and
Theft Section

JUDICIAL BRANCH OF THE NATION

... that subsequently he participated in the resistance as a "MAQUI", that he has taken part in battles, that he has been wounded and that he has been a prisoner. After His Honor asked him if he had anything to add to his statement he stated that: He had nothing to do with the hold-up of the Banco de la Nacion. He wished to report that while at the Police Headquarters he was subjected to illegal coercion and was forced to declare his participation in the hold-up. He was held naked for two nights and electricity was applied throughout his body. He has no marks on his body except for the ankles and the wrists which he showed at this proceeding. With nothing further to add, His Honor concluded the proceeding, after having the foregoing read out loud, the deponent ratified and signed it as did the defense counsel and the prosecutor who witnessed the proceeding, before me, and as did His Honor. I ATTEST.

Corrections Excepted "Palace" and "1st" and B.L. "1st" STET.

(Signature)

(Signature)

(Signature)

(Signature)

DR. MIGUEL A. INCHAUSTI
Federal Judge

(Signature)

Guillermo F. Rivardia
Federal Secretary

... as to the photos contained on page 119 that were shown to him, he indicated that he does not know the individual depicted therein. When the photo on page 116 was shown to the defendant, he stated that the individual marked with number 4 is FRANCOIS CHIAPPE. The first individual from the right in the photo, marked as No. 2 is the said DOS SANTOS. As to the little girl who appears in the photo, she is CHIAPPE's daughter. After being shown the photo on

* * *

paper for, he believes, the Banco de Galicia. When the deponent was asked to give the reason why he went to CHIAPPE's house on the date of the arrest, he answered that the reason was that on that date CHIAPPE celebrated his birthday. Since the deponent called him two days prior to say hello, he suggested that the deponent go by the house, which he did. When asked to say whether he has ever lived at 2368 Libertador Avenue as stated on the insurance policy for the yacht "Antibes" he answered that: He has never resided at that address. He thought probably it corresponds to the previous owner of the vessel. He had kept the passport that he obtained in Spain in his own name, at home until the date of his arrest. He had shown that document to the Argentine authorities to be able to come into the Republic of Argentina. He signed the lease for the house

Buenos Aires, May 24, 1968

Being that it is no longer necessary to continue the state of incommunicado of the defendants FRANCISCO CHIAPPE and LUCIEN SARTI or LUCIANO SANCHEZ, it is hereby ordered terminated, and it should be so communicated by cable to the Court House detention cells in the prescribed manner.

Send an official note to the Forensic Medical Corps requesting that they examine the prisoner FRANCOIS CHIAPPE and to report to this court any injuries that he may have sustained, the origin and cause of the same, healing time, etc., in the legally prescribed manner.

Summon FRANCISCA MARTINEZ de TISERA to testify in an initial hearing (pages 199 and cont.)

In order to insure the seccess of the investigation these records shall remain sealed for the term permitted by law (Art. 180, Code of Criminal Procedures).

Notify the Superior Officer by official notice to that effect.

(Signature)

MIGUEL A. INCHAUSTI
Federal Judge

On the same date the order to terminate the state of incommunicado of the prisoners was issued and delivered. OF RECORD.

(Signature)

Guillermo F. Rivarola
Federal Secretary

On the same date notice was issued to the Forensic Medical Corps. OF RECORD.

(Signature)

Guillermo F. Rivarola
Federal Secretary

MINISTRY OF THE INTERIOR
FEDERAL POLICE

INCHAUSTI - RIVAROLA

DATE 5/24/68

POLICE: Court House Commissioner

Pursuant to the order of His Honor I am instructing you, in reference to Case No. 717/68 instituted for the crime of robbery to the Banco de la Nacion Argentina, to terminate the state of incommunicado of the prisoners FRANCOIS CHIAPPE and LUCIEN SARTI or LUCIANO SANCHEZ.

Respectfully,

(Signature)

Guillermo F. Rivarola
Federal Secretary

JUDICIAL BRANCH OF THE NATION

Buenos Aires, May 27, 1968

Hon. National Judge for the
Federal Criminal and Correctional Section
DR. MIGUEL A. INCHAUSTI
RIVAROLA, Secretary

Case No. 717/68

Pursuant to Your Honor's order, on this date in the detention cells at the Court House, we proceeded to examine the prisoner FRANCOIS CHIAPPE, a Frenchman, 48 years old, married, in order to report to that court, as prescribed by law.

He reported that on the last May 15th while in the cell at the Police Headquarters, he was blindfolded and placed on a table on his back with both wrists and both ankles tied. Thus secured, he was drenched with water and electricity was applied throughout his body. He added that he was unable to see anybody but that he realized that there were several individuals taking part.

Through our examination we confirmed that:

a) On the inside of the left foot he has a round abrasion 5 mm. in diameter and there is swelling on the top of the foot.

b) The right foot is equally swollen.

c) On the back part of the left wrist there is a wound covered by a scab, 2 by 1 cm.

d) On the same wrist front side, there are two abrasions 10 by 5 mm. each.

e) On the back part of the right wrist there is a transverse linear abrasion, 15 mm. long.

Throughout the rest of the body, aside from old scars some of which were sustained during the last World War in which the prisoner was involved for five years, we were not able to observe any recent injuries of any type or any trace thereof.

The previously described injuries, which could well have been caused by the mecanism described by the defendant, will heal in between 15 to 20 days without incapacitating him for work or leaving any of the traces referred to in Articles 90 and 91 of the Criminal Code.

God Keep Your Honor

(Signature)

DR. DOMINGO ELICEGIS
Forensic Doctor
for Federal Justice

Received at the Secretary's Office today May 28, 1968 at 5:16 P.M. OF RECORD

(Signature)

Guillermo F. Rivarola
Federal Secretary

At the hearing held on June 6, 1968 before His Honor and the attesting Secretary, appeared an individual arrested in this case, who was advised that he would be questioned further for the purposes of the investigation. Not having expressed any opposition thereto he was questioned pursuant to Article 241 of the Code of Criminal Procedures and he stated that his name is LUCIEN SARTI, other personal data appears on page 247 of the record. Under questioning by the Hon. Judge, he stated that: He wishes to correct his initial statement when he indicated that he had been properly treated while at the Police Department. He said that he made such a statement because he was afraid, since after the deposition he was to be taken back to the same Police Department, as was explained to him by the Director of the Robbery and Theft Section. The truth of the matter is that on the day of the arrest and thereafter, he was subjected to illegal coercion at the Police Department so that he would confess his participation in the hold-up of Banco Nacion and so that he would admit that his name is SARTI when in fact his true name is LUCIANO SANCHEZ. For that purpose he was blindfolded and thereafter he was placed naked on a table in order to apply electricity throughout his body which had previously been soaked with water. He underwent this torture repeatedly during two days. Furthermore, for two nights he was left naked and handcuffed in a cell. The days that he is referring to are May 15th and 16th of this year. Even though, because of the time that has elapsed, the marks left by such coercion may have disappeared, he

-2-

fears that he may have internal injuries because he has pains around the stomach area and experiences a numbness of the testicles. Since the deponent was blindfolded when he was thus coerced, it is impossible for him to recognize the individuals who took part. Once again he wants to make it perfectly clear that his true name is LUCIANO SANCHEZ and that the other personal data given to the court is correct. Not having anything further to add, this proceeding was concluded and after the foregoing was read out loud, the deponent ratified and signed it as did his defense counsel, Dr. Roberto Eliosoff who was present, after the Hon. Judge, before me. I ATTEST.

(Signature)

(Signature)

(Signature)

MIGUEL A. INCHAUSTI
Federal Judge

(Signature)

Guillermo F. Rivarola
Federal Secretary

Buenos Aires, June 6, 1968

Notify the Forensic Medical Corps requesting an examination of the defendant LUCIANO SANCHEZ or LUCIEN SARTI and a report on any injury he may show, the origin and cause thereof and the healing time, etc., according to law.

(Signature)

MIGUEL A. INCHAUSTI
Federal Judge

Notification issued on the same date.

(Signature)

Guillermo F. Rivarola
Federal Secretary

UNITED STATES DISTRICT
COURT
EASTERN DISTRICT OF
NEW YORK

73 C 169

UNITED STATES OF AMERICA,

- v -

FRANCOIS CHIAPPE,

Defendant.

SUPPLEMENT TO MOTION FOR NEW TRIAL and AFFIDAVIT

U.S.
MAR 2 9 34 AM '77
EAST. DIST. N.Y.

Attys for Defendant
GINO E. GALLINA, ESQ.
LENEFSKY, GALLINA, MASS & HOFFMAN
ATTORNEYS AT LAW
30 BROAD STREET
NEW YORK, N. Y. 10004

(212) 344-1550

52 FC

DGT:PRS:ms UNITED STATES DISTRICT COURT
F.735,205 EASTERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

- against - :

FRANCOIS CHIAPPE, :

Defendant :

- x

AFFIDAVIT IN RESPONSE TO FRANCOIS CHIAPPE'S MOTION FOR A NEW TRIAL

73 CR 164

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ MAR 4 1977 ★
TIME A.M. ....

EASTERN DISTRICT OF NEW YORK, SS:

PETER R. SCHLAM, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney on the staff of David G. Trager, United States Attorney for the Eastern District of New York.

2. This affidavit is submitted in response to defendant, Francois Chiappe's motion for a new trial. Francois Chiappe was found guilty by a jury on December 8, 1976 of conspiring to traffic in heroin.

3. An Argentine police officer, Alberto Borsalino, testified for the government at the trial. He identified certain items seized in connection with the arrest of Chiappe in Buenos Aires, Argentina in May of 1968. More specifically, Borsalino testified that $19,000 in United States currency had been seized from Mrs. Chiappe's handbag in the presence of Mr. Chiappe; that a false Italian passport and identification card in the name of Silvio Bianchi had been seized after Chiappe showed it to the police officers in response to their request that he identify himself; and that a search of Chiappe's apartment had uncovered photographs of Chiappe, Francois Rossi and Michel Nicoli. The items identified by Borsalino were received in evidence. (A photograph of the $19,000 rather than the currency itself was received).

4. Chiappe's motion for a new trial is based on his allegation that Officer Borsalino lied when he testified that Chiappe was arrested on May 17, 1968, contending instead that the arrest occurred on May 15, 1968. He further states that Borsalino also lied in denying that Chiappe had been tortured. He concludes his argument by claiming that I knew at the time this testimony was given that it was false, and that I deliberately withheld my knowledge from the defense in violation of my obligation under Brady v. Maryland, 373 U.S. 83 (1963). The basis of Chiappe's allegations concerning Officer Borsalino's testimony is contained in documents attached to his "supplement to motion for new trial", dated February 28, 1977.

5. We suggest that the documents submitted by Chiappe in support of his claim that the arrest took place on May 15, 1968, are, at best, vague and inconclusive. Document #1 concerns the arrest of Lucien Sarti and in no way refers to Chiappe. Document #2 sets forth the fact that two French police officers examined composites of Argentine bank robbery suspects on May 15, 1968 and told the Argentine police that one of the composites resembled Chiappe. The document further indicates that the Argentine police received information that Chiappe resided at a certain address. In no way does it state that Chiappe was arrested on May 15, 1968. Document #3 refers to Chiappe's complaint that he had confessed to the bank robbery because of alleged coercion. The document is undated and does not contain the date of Chiappe's arrest. Document #4, also undated, apparently refers to Lucien Sarti's statement to the Argentine police that he recognized photographs of Chiappe and one Dossantos. The document also sets forth Sarti's statement that his reason for going to Chiappe's house on the date of Sarti's arrest was to celebrate Chiappe's birthday. Once again, this document does not contain the specific date of Chiappe's arrest, and we

note that Chiappe's conclusion that Sarti must have been referring to May 15th because that is Chiappe's birthday disregards Chiappe's frequent use of false identifications, bearing dates of birth other than May 15, 1920. For example, Chiappe's Bianchi identification papers listed his date of birth as May 29, 1920. Document #5, dated May 24, 1968, consists merely of a notice that Chiappe's incommunicado status was terminated as of that date on the ground "that it is no longer necessary." In contrast to Chiappe's contention that it was lifted only because the ten day period had elapsed thereby proving, according to him, that his arrest occurred on May 15th, We suggest that the words of the document indicate that the status was terminated due to lack of necessity to continue to hold him incommunicado, rather than to the expiration of a legal time requirement. Document #6, also dated May 24, 1968, merely recites that the order terminating Chiappe's incommunicado status was issued. Once again, it in no way refers to the date of arrest. Document #7, dated May 27, 1968, contains Chiappe's statement that he was arrested on May 15, 1968 and subsequently tortured by the Argentine police. Chiappe's statement is totally uncorroborated. As this Court stated in its opinion on February 1, 1977 concerning Chiappe's Toscanino motion, the Court "rejects the testimony of Chiappe... believing it to be a fabrication...". We suggest that the only thing that is proven by document #7 is that Chiappe told an Argentine doctor that he was arrested May 15, 1968.[1] Document #9, concerns statements made by Lucien Sarti to a judge in Argentina on June 6, 1968. Sarti is reported as having claimed during this proceeding that his initial statements to the Argentine authorities that he had not been tortured were false, and that he wished on that date to state that he had been tortured. He further stated that the alleged torture had occurred on May 15 and 16, 1968. In addition to Sarti's admission that he had previously lied to an Argentina judge, we suggest that Sarti's credibility can be further measured by his insistence to the judge that his true name was Luciano Sanchez. We further note that document #9 does not even mention Chiappe. Our conclusion concerning these documents is that they in no way establish that Chiappe was arrested on May 15, 1968.

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[1] Document #8 is not contained in the copy of the motion provided to us.

6. In any event, even assuming that Chiappe was arrested on May 15, 1968, we fail to see how that fact could have influenced the jury's verdict. A two day discrepency in Officer Borsalino's testimony about an event that had taken place eight years before could hardly have been considered important by the jury. We suggest that our conclusion is reinforced by Chiappe's failure, at any time, to deny his link to the evidence received through Officer Borsalino.

7. Chiappe's charge that I knew and deliberately withheld the fact that Chiappe was arrested on May 15th, 1968 is entirely groundless. As I stated during the Chiappe trial, while I was in Buenos Aires to represent the government in connection with Chiappe's depositions, I went to the Argentine courthouse and examined the court files on Chiappe's bank robbery case. As I recall, the file consisted of approximately ten volumes, each containing approximately 200 pages. The reports and documents in that file were in the Spanish language. I neither speak nor understand Spanish. My attention in the course of my review focused on both photographs of persons that I recognized and on the false identification containing Chiappe's picture. In this regard, I further note that Mr. Gallina, Mr. Chiappe's attorney, was in Argentina on this and other occasions in the time period shortly preceding Chiappe's trial, and, therefore, had the same opportunity as I to go to the courthouse, a public building, and to review the same file.

WHEREFORE, we respectfully request that Chiappe's motion for a new trial be denied.

Dated: Brooklyn, New York
March 4, 1977

Peter R. Schlam
PETER R. SCHLAM
Assistant U.S. Attorney

Sworn to before me this
4th day of March, 1977
Martha Scharf

MARTHA SCHARF
Notary Public, State of New York
No. 24-34[illegible]
Qualified in K[illegible]
Commission Expires [illegible] 17

SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the ____ day of ____________, 19____, at 10:30 o'clock in the forenoon.

Dated: Brooklyn, New York,
________________________, 19____

____
United States Attorney,
Attorney for __________________

To:
____
____
____
Attorney for ______________________

SIR:

PLEASE TAKE NOTICE that the within is a true copy of ____________ duly entered herein on the ____ day of ______________ ______________, in the office of the Clerk of the U. S. District Court for the Eastern District of New York,

Dated: Brooklyn, New York,
________________________, 19____

____
United States Attorney,
Attorney for __________________

To:
____
____
____
Attorney for ______________________

Criminal Action No. 73 CR 164

UNITED STATES DISTRICT COURT
Eastern District of New York

UNITED STATES OF AMERICA

—Against—

FRANCOIS CHIAPPE,

Defendant

AFFIDAVIT IN RESPONSE TO FRANCOIS CHIAPPE'S MOTION FOR A NEW TRIAL

DAVID G. TRAGER
United States Attorney,
Attorney for USA
Office and P. O. Address,
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within ______________ is hereby admitted.

Dated: ______________________, 19____

____
Attorney for ____________________

FPI-LC-SM-8-73-7385

PETER R. SCHLAM, AUSA
330-7013

examine him.

THE COURT: All right, you can read it. We will take the other hearing.

MS. ROSNER: Thank you, Judge.

THE COURT: I'm sorry, you will hae to wait. We want to complete this today.

(The witness then left the courtroom.)

THE CLERK: Come forward, please, stand right there.

(The following questions were asked and answers given through the interpretor Libya Clancy.)

THE CLERK: Can you state your name, please, and spell it for the record.

ALBERTO JESUS BORSALINO, called as a witness on behalf of the Government, having been duly sworn by the Clerk of the Court, testified as follows:

MS. ROSNER: Your Honor, may I leave the room for a minute?

THE COURT: Yes.

(Ms. Rosner then left the courtroom.)

MR. GALLINA: Your Honor, I didn't hear his name, could I have that spelling?

THE COURT: Borsalino, Alberto Jesus Borsalino.

DIRECT EXAMINATION

BY MR. SCHLAM:

Q What is your occupation, sir?

A I am a policeman.

Q In what country?

A Argentina.

Q And what is your position in the police department of Argentina?

A Assistant Commissioner.

Q And what is the official name of the police department of which you are a member?

A Intelligence Department.

Q But I mean is it the Federal police of Argentina?

A Precisely.

Q Now, do you know an individual by the name of Francois Chiappe?

A Yes.

Q And do you see him in the courtroom today?

A Yes.

Q Would you point him out, please?

A Yes, he is over there (indicating).

Q And specifically can you give us some descriptive data so we know whom --

MR. GALLINA: I can see he is identifying him.

THE COURT: Identification is conceded.

BY MR. SCHLAM:

Q Now, how long have you been a member of the Federal Police of Argentina?

A 22 years.

Q Mr. Borsalino, were you working in connection with your employment as a police officer in Argentina on May 17th, 1968?

A Yes.

Q And what section of the police department were you assigned to on that date?

A In the robbery and theft division.

Q Now, were you working in connection with a surveillance on that date?

A Yes.

Q And where were you in connection with that surveillance on May 17, 1968?

A Bermudez Street, number 3700.

Q What city is that in --

MR. GALLINA: 37 what, please?

THE WITNESS: 3700.

A (continuing) and I was surveilling the house on Bermudez Street number 3,717.

Q In what city is that street located in?

A Buenos Aires.

Q Do you know who lived in the house that was the object of your surveillance?

MR. GALLINA: Objection.

THE COURT: Overruled; I will allow it.

A Yes.

Q Who?

A Francois Chiappe.

Q Now, Mr. Borsalino, were you conducting this surveillance by yourself or with other police officers?

A No, they were about 10 of us.

Q And did you have any walkie-talkies which you were using in the course of this surveillance?

A Yes.

Q Now, did there come a time that you received a communication via walkie-talkie on that day, May 17, 1968?

A Yes.

Q And approximately what time of the day did you receive that communication?

A At 12:00.

Q 12:00 noontime?

A 12:00 Noon.

Q And would you tell us, please, what you did as a result of receiving that communication?

A We proceeded to the arrest of Francois Chiappe and his wife, Margarita Navaldad Inomo.

Q Where did you first see Mr. Chiappe and his wife after receiving this radio communication, this walkie-talkie communication.

A At the corner of the house, that being Bermudez 3700.

Q Now, tell us what happened when you first saw Mr. Chiappe after having received a radio communication, step by step, what happened to the best of your recollection.

A Well, Chiappe was accompanied by his wife, Margarita.

We approached them, the policemen approached them. We asked them to identify themselves.

He took out a passport and an identity card.

Q When you say "he," whom are you referring to?

A Chiappe.

MR. SCHLAM: Will you mark these please?

THE CLERK: Passport marked Government's Exhibit 59 for Identification.

Identification card marked Government's Exhibit 60 for identification.

(Continued next page.)

Borsalino-direct

BY MR. SCHLAM:

Q Mr. Borsalino, will you take a look, please, at Government's Exhibits 59 and 60 for identification and tell us if you recognize them?

A Yes, I recognize them as the same.

Q You recognize them as the same as what?

A That Chiappi showed me, claiming to be Sylvio Bianchi.

MR. SCHLAM: For purposes of this hearing, I offer these documents in evidence.

THE COURT: Any objection to their being marked in evidence in this hearing?

MR. GALLINA· For purposes of this hearing, no.

THE COURT: For purposes of this hearing, all right, let it be marked.

THE CLERK: So marked as Government's Exhibits 59 and 60 in evidence in the hearing.

MR. SCHLAM: Ok.

Q Now, Mr. Chiappi you said identified himself by showing you the documents which you have just identified as 59 and 60 in evidence: Correct?

A Yes.

Q And what happened if anything with respect to his wife, Margarita?

A Well, as I checked the handbag that she was carrying --

Q Excuse me, before you get into that, did you ask her to identify herself?

A Yes, I did not, my superior did.

Q When your superior did, were you listening to what was happening?

A Yes.

Q Tell us, please, what was happening between -- What was being said between your chief and Mr. Chiappi at this time?

A Well, she was asked likewise to identify herself. She took out an identity document which showed her name to be Margarita Navaldad Inomo.

Q Ok, continue, what happened then?

A Well, when we registered -- when we looked into the handbag that she was carrying, we found nineteen thousand American dollars in it.

Q Go ahead, please, what happened next?

A I think additionally we seized eight hundred dollars that Chiappi was carrying.

Q And what type of currency?

A $80,000 --I mean $800 American dollars.

Q Ok.

A And approximately 50,000 Argentine pesos.

Q Now, all of this --

THE COURT: In what denominations were the American dollars?

THE WITNESS: There was everything, hundreds, 50's, I don't remember exactly.

MR. SCHLAM: Would you mark this, please?

THE CLERK: Photograph marked as Government's Exhibit 61 for identification.

THE COURT: How much is 50,000 pesos in American dollars?

THE WITNESS: Well, there has been a considerable devaluation of the Argentine currency since that time. At the present time they must --

THE COURT: No, I am not interested in the present time, at the time of theseizure.

THE WITNESS: They must amount to about 2.00 but --

(At this point the interpretor and the witness conferred.)

THE WITNESS: I don't remember the dollar value at that time.

THE COURT: All right.

BY MR. SCHLAM:

Q Now, would you look, please, at what has been marked as Government's Exhibit 61 and tell us if that photograph shows any American money?

A Yes.

Q And do you recognize the money which is depicted in that photograph?

A Yes.

Q And what money do you recognize it to be?

A It is evident that this picture was a picture taken of the effects seized from Chiappi and therefore it must be the money that was found on him at that time.

MR. SCHLAM: Your Honor, I will offer this photograph into evidence.

THE COURT: Show it to Mr. Gallina.

MR. GALLINA: I would like to have a voir-dire, your Honor.

THE COURT: Was the money found on Chiappior his wife?

MR. SCHLAM: Wait a second, before you answer that question, can you just count the money, that might help you with the answer.

(At this point the witness perused the document before him, the photograph).

THE WITNESS: Apparently from both of them.

THE COURT: All right.

Go ahead on voir dire.

VOIR DIRE EXAMINATION

BY MR. GALLINA:

Q Did you photograph this money?

A No.

Q Did you lay the money down on the table to be photographed?

A No.

Q Is there any distinguishing mark on these monies that would identify it as belonging to anybody particular.

A No.

Q So this could be any American money and any Argentian money; is that correct?

A Yes, but since it is together with the other effects that were seized from Chiappi, I am assuming that it is the money that was seized from him.

Q Yes., --

THE COURT: Doesit look like the money you seized?

THE WITNESS: Yes.

BY MR. GALLINA:

Q All American money and all Argentinian --

THE COURT: Objection sustained.

BY MR. GALLINA:

Q Does that look like Argentinian money?

THE COURT: Objection sustained.

Q Do you know what date these pictures were taken?

THE COURT: Objection sustained.

Q Did you take the serial numbers --

THE COURT: The basis for admissibility into evidence is that it looks like the money that was seized.

MR. GALLINA: I can't crosson that point --

THE COURT: On voir dire do you have anything further?

This is a voir dire.

MR. GALLINA: Yes, sir.

THE COURT: You have nothing further?

Mark it.

MR. GALLINA: We have.

There is a question here, your Honor, if I may question him on the connection before the jury, there is no sense to that --

THE COURT: Mark it.

THE CLERK: Photograph previously marked

for identification as Government's Exhibit 61, is now marked in evidence in the hearing.

THE COURT: Continue your examination.

CONTINUED DIRECT-EXAMINATION

BY MR. SCHLAM:

Q Now, Mr. Borsalino, with respect to the money and with r espect to the items which have been marked 59 and 60 did those items come into possession of the police when Mr. Chiappi and his wife were still on the street?

A Yes.

Q Now thereafter did you have a conversation with either Mr. Chiappi or Mrs. Chiappi with respect to searching their house?

A Well, Mr. Chiappi authorized my superior to make a search in the house where he was residing, that is to say on Bermudez Street 3717.

Q And were you present when your chief and Mr. Chiappi werehaving this conversation about searching the house?

A Yes.

Q Now thereafter where did you go and where did Mr. and Mrs. Chiappi go?

A To the residence at Bermudez Street, 3717.

Q Can you tell us, please, what happened during the time that you were there on May 17th, 1968?

A Well, in the house were his wife, parents, Chiappi's wife's parents, and we proceeded to search the house and to question them as to the reason for the possession of those 1900 dollars -- 19,000.00 dollars. We questioned Margarita --

Q Ok.

Now, were you present when Margarita, Mrs. Chiappi, was being questioned about the 19,000 dollarsthat was found in her pocket book?

A Yes.

Q Ok.

Was Mr. Chiappi present?

A Yes.

Q And your chief was present; am Icorrect?

A Yes.

Q Now as best as you can, please relate the conversation that was taking place, that was inside Mr. Chiappi's apartment; am I correct?

A Yes.

Q Would you tell us, please, what the conversation among you was concerning the money that hadbeen found in Mrs. Chiappi's handbag?

A Because of the time that has passed, I cannot relate full details --

Q As best you can.

A But I do remember that she said that Chiappi had given it to her before they left their home, when he observed -- when he observed that there was police surveillance on the house.

Q Ok.

Now, did you participate in the search of Mr. Chiappi's apartment?

A Yes.

Q And specifically, did you search Mr. and Mrs. Chiappi's bedroom?

A Yes, together with other police officers.

Q Now, were the other police officers Brazilian police officers?

THE WITNESS: No, we were all Argentinian.

THE COURT: I mean Argentinian, I'm sorry, Argentinian police officers.

THE WITNESS: We were all Argentinian Federal police and all from the Robbery and Theft Division.

THE COURT: Any American agents of any kind in that surveillance team?

THE WITNESS: None.

Q Did any to your knowledge, did any American agents ask you to make the surveillance?

THE WITNESS: No, the information came from the French Police.

THE COURT: You are going to establish what came over the radio or what the basis for thearrest was or what the charge was.

MR. SCHLAM: Your Honor, I had not even intended to go into the arrest in front of the jury, in other words I was just going --

THE COURT: You are not before the jury.

Maybe I should know the events because they may become an issue as to whether there was probable cause under American law.

BY MR. SCHLAM:

Q Take a look, please, at Government's Exhibits 25 and 56 and tell us whether you recognize them?

MR. SCHLAM: Your Honor, can I first establish these exhibits?

THE COURT: Yes.

Q When for the first time did you see them?

A At Chiappi's house.

Q Can you tell us where in Chiappi's house, if you can, you saw those photographs for the first time?

A In thebedroom.

(continued next page)

Q And did you see them in connectin with the search that was conducted on his house on May 17, 1968?

A Yes.

Q Now, Mr. Borsalino, on May 17, 1968, you say you were attached to the Robbery Division; and am I correct?

A Robbery and Theft.

Q And had you together with the other officers assigned to that divisionbeen conducting an investigation of a bank robbery in Buenos Aires?

A Yes.

Q And did the bank robbery occur sometime in the month of April, 1968?

A Yes.

Q Now, in connection with your investigation, did you have occasion to have a composite photograph prepared of one of the suspected bank robbers?

A Yes, it is called an indenticate.

Q Did you see that particular composite photograph or indenticate or whatever the phrase is that you used to describe it?

A The indenticate is put together by the witnesses to therobbery of the bank.

Q Right.

Did you see that indenticate, did you see the indenticate that wasprepared in connection with the robbery that you were investigating, the one that we are speaking about in April of 1968?

A Yes.

Q And you also had occasion, did you not, to discuss this robbery with the other police officers in your division who were also working in their effort to solve it; am I correct?

A Yes.

Q Now you told us that you or the fellow officers who were assigned to investigate the bank robbery received information from France; am I correct?

A Yes.

Q And tell us, please, what the nature of the information provided by France was in connection with the investigation that you wereconducting of this bank robbery?

A The French police notified us that two characters, we could say two Frenchmen, had arrived in Buenos Aires who showed a record, a criminal record in France, and that they could very well be responsible for the bank robbery, and aside from that they sent the picture of Chiappi and Lucian Sarti.

Q Now, did you have occasion to compare the photograph that was provided by the French of Francois Chiappi with the composite photograph that witnesses had prepared of the suspected bank robbers?

A Yes.

Q And can you tell us, please, what conclusions you reached when you made the comparison at the time?

A They were very similar.

Q And in relation to the time that you received the photograph of Mr. Chiappi and compared it to the composite how soon thereafter did you initiate a surveillance of Francois Chiappi, approximately?

A The communication was received I believe approximately on May 16, and that same evening the surveillance was initiated on the store, or better said in theresidence that Mr. Chiappi was living, but he only came out and was arrested the following day.

Q Ok.

And when you say the communication was received on the 16th, you are referring to the photograph that was -- and the accompanying information that was provided to you by the French Police; am I correct?

A Yes.

Q And it was based on the series of events that you have just related that the surveillance and the arrest of Francois Chiappi occurred on May 17th, 1968; isthat correct?

A Yes.

MR. SCHLAM: I have no further questions other than to offer these two photographs into evidence.

THE COURT: Any objectin for the purposes of this hearing?

MR. GALLINA: For purposes of this hearing, yes, your Honor.

THE COURT: For purposes of this hearing there is objection or have you no objection?

MR. GALLINA: Yes.

THE COURT: What is the objection?

MR. GALLINA: The question of the manner of the search and the connections to this hearing.

THE COURT: These arethe very items which if they are suppressed will be suppressed; am I right?

MR. GALLINA: Also for the purposes of this hearing --

THE COURT: Objection overruled.

Let it be marked.

THE CLERK: May I have them, please.

MR. SCHLAM: That concludes our examination, your Honor.

THE COURT: All right, Mr. Gallina.

THE CLERK: Government's Exhibits 25 and 56 which have been marked in evidence in the trial are now marked in evidence in the hearing.

CROSS-EXAMINATION

BY MR. GALLINA:

Q Is it Officer Borsalino; is that correct?

A Assistant Commissioner.

Q Commissioner, how long was it that you had Mr. Chiappi in custody from the time you arrested him?

THE COURT: You mean to the time of the search?

MR. GALLINA: I am talking --

THE COURT: You are talking about after the search?

MR. GALLINA: From the beginning to the end, to the time he was released --

THE COURT: I am not interested in anything that occurred after the search.

MR. GALLINA: Our position is that the search didn't take place that day, and I want to get to that position in my own way, and that it didn't take place on that day or even in close proximity to that day and I will be offering evidence to that effect so I would like to get that out in this way.

I don't want to have to do it as the prosecutor was directing --

THE COURT: It was not the prosecutor, he hadn't asked a thing about it, I was the one that was doing that, Mr. Gallina.

MR. GALLINA: I didn't mean to say that.

THE COURT: All right, continue.

BY MR. GALLINA:

Q How long was it that you had Mr. Chiappi in custody, Commissioner?

A Four or five hours.

Q Well, wasn't he kept in police custody or prison custody at that arrest for about a year?

A He was, he was in my custody while we were carrying out the search of the house, which extended to 3 or 4 hours later After we had been in the house, Lucian Sarti arrived armed --

Q Wasn't, however --

However wasn't Mr. Chiappi in police custody, in police custody of the Federal Police of Buenos Aires for about a year? Before he was released?

A No, in my own personal custody he was only after the arrest.

Thereafter he was at the Robbery and Theft Division while the detention period was made and then after that he was brought before the judge.

(continued next page)

Q How long was he in the prison because of this arrest?

THE COURT: Objection sustained.

MR. GALLINA: Your Honor, I will show a basis for it to show that there were extensive interrogations.

THE COURT: How long was he in prison because of the arrest.

MR. GALLINA: How long did they hold him in prison. That's what I am asking. Just how long did they hold him in prison.

THE COURT: Objection sustained to the last question.

After you were through with your search, was he continued in the custody of the police?

THE WITNESS: Yes. In the Robbery and Theft Division.

THE COURT: From the time he was taken in your custody to the time he was brought before a Judge, how long did that take?

THE WITNESS: Well, I don't know exactly because I did not conduct that part of the proceedings. But I assume it must have been some seven days.

THE COURT: Did you lose track of Mr. Chiappi after that?

THE WITNESS: Yes.

THE COURT: Was he turned over to some other authority?

THE WITNESS: To another authority? I don't understand.

THE COURT: Well, another part of the Police Department or to the Prosecutor's office?

THE WITNESS: No. From Robbery and Theft, he was moved to the Palace of Justice. And there to the jail, which depends from the -- from the jail system, not from the police per se.

THE COURT: Was the charge ever made -- a formal charge ever made against Chiappi for the bank robbery?

THE WITNESS: I don't understand.

THE COURT: Did he ever go to trial on the charge?

THE WITNESS: Yes.

THE COURT: Was he convicted or acquitted?

THE WITNESS: I think it was dismissed.

THE COURT: So as far as you know, he was acquitted?

THE WITNESS: Of the bank robbery, yes.

THE COURT: When he was acquitted, was he released from jail?

THE WITNESS: Because of the bank robbery. But aside from that, he was also prosecuted because of false documents.

THE COURT: I see.

Go ahead, Mr. Gallina.

Q Mr. Borsalino, wasn't Mrs. Chiappi, Marguerita Chiappi, held by you and the other police who arrested her for ten days incommunicado without her being contacted by any relatives, lawyers or anybody?

MR. SCHLAM: Objection, your Honor.

THE COURT: I will allow it. I want to know the kind of questions that Mr. Gallina is thinking of for the jury. So I think it will be enlightening. I will allow it.

THE INTERPRETER: May I have the question?

MR. GALLINA: If you are not interested in the questions for any other reason, I will sit down.

THE COURT: I am not interested in nonsense. Sit down. I won't take your nonsense. Sit down. And you will hear from me at the end of the trial as I told you once before. You don't accept the rulings. You continually ask questions that you know are improper under my rulings. Now you are impertinent. And I won't stand for your being impertinent.

MR. GALLINA: Your Honor, I asked a proper question. And your Honor --

THE COURT: I ruled it was improper.

MR. GALLINA: I didn't understand that was the ruling. I thought it was a comment on what I was asking and what I would do during trial.

THE COURT: Yes, it was improper. We are talking about a search here. We are not talking about statements made by Mrs. Chiappi.

MR. GALLINA: We are talking about a search which was conducted pursuant to torture. After a long period of torture and incarceration.

THE COURT: Do you have any other questions?

MR. GALLINA: Yes, I do, your Honor.

THE COURT: Well, ask them.

MR. GALLINA: I will.

THE COURT: When I rule on them and I say they are improper, don't you dare ask them. I will hold you in contempt.

MR. GALLINA: I will not do it.

THE COURT: You have been doing it even though I warned you I will hold you in contempt of Court.

MR. GALLINA: I will not do that.

Q Now, Mr. Borsalino, how long was it that Mrs. Chiappi was held before she was turned over to any Judges or any arraignment process?

A I don't remember. But, I believe it might have been one, two days.

Q Wasn't it in fact ten days, Mr. Borsalino?

A I don't know. It could be.

Q Wasn't it a fact that Mr. Chiappi was also not turned over to arraignment process for about ten days -- no, about 30 days in fact?

A No, that is not so.

Q Well, how many days?

THE COURT: Objection sustained. No further questions about how long Mr. Chiappi was held after the search or how long Mrs. Chiappi was held after the search. Do you understand that? No more questions.

MR. GALLINA: All right. Objection, your Honor.

THE COURT: Don't say, "objection." You have an objection under the rules.

MR. GALLINA: All right.

Q Was Mrs. Chiappi at any time physically abused?

THE COURT: Objection sustained.

Q During the period of time prior to Mrs. Chiappi being arraigned in the Court of Law, was she tortured?

THE COURT: Objection sustained. I am only interested in what happened to the time of the search and seizure. There's only one question that involves pressure or coercion.

MR. GALLINA: I am not --

THE COURT: Will you let me finish.

MR. GALLINA: Yes, your Honor.

THE COURT: And that's the apparent consent to search. Under our rules -- I don't know whether it applies at all down in Argentina --

MR. GALLINA: If there is torture priorto the search --

THE COURT: All right, we will suspend.

MR. GALLINA: It is the product of torture.

THE COURT: I will continue this sometime tomorrow. And you better get your cross-examination up for tomorrow and it better be proper on the issue, Mr. Gallina. I won't waste time with you.

MR. GALLINA: Your Honor, if I may say as an offer of proof, I will offer questions or make -- or ask questions of torture prior [illegible] search.

THE COURT: Show that I am leaving the bench, will you please.

(Whereupon, an adjournment was taken to Tuesday, November 30th, 1976 at 10:00 O'clock a.m.)

2 the jury.)

THE COURT: Are you calling Mr. Doukas or Mr. Borsalino?

ALBERTO JESUS BORSALINO, having been recalled as a witness, having been previously duly sworn by the Clerk of the Court, was examined and testified, through the interpreter, as follows:

THE COURT: Please be seated, Mr. Borsalino.

Mr. Gallina, from where we left off.

CROSS-EXAMINATION

BY MR. GALLINA:

Q Mr. Borsalino, do you have any documents with you indicating the date you arrested the defendant?

A No.

Q Isn't it a fact that you arrested Mr. Chiappe on the 15th and not the 17th?

A No. I arrested him on the 17th.

Q What day is it that you say you went into the bedroom where Mr. Chiappe slept?

A On the 17th.

Q Hadn't you been torturing Mr. Chiappe for two days prior to entering that bedroom to get permission?

A No.

Q Hadn't you -- didn't you participate in torturing the defendant Chiappe?

Borsalino-cross-Gallina

A No, he was not tortured.

Q Didn't you participate in the torture of Mrs. Chiappe?

A No, and she was not tortured either.

Q Didn't she have a miscarriage right there while she was being tortured?

A No.

Q What was the amount of money that was stolen from the bank?

A Approximately 17-million pesos.

Q Was any American money stolen from the bank?

A No.

Q Where was Mrs. Chiappe when you say you had the conversation with her concerning where she had gotten the $18,000?

A Inside Chiappe's house and it was 19,000.

Q [illegible] 19,000?

A Yes.

Q And was the money there?

A No. I have already explained to you yesterday that she was carrying it in a handbag she had with her as she came out accompanied by Chiappe as she was arrested around the corner from the house.

Q And Mr. Chiappe was arrested in front of the house?

A No, around the corner.

Q Was he walking with Mrs.Chiappe?

A Yes.

Q Didn't you immediately take Mr. Chiappe to your police headquarters?

A No, we came back to the house. We went to the house.

Q And you mean at that point you gained entrance to the house?

A Exactly. Immediately after the arrest.

Q That was not Mr. Chiappe's house though, was it?

A That's where he lived.

Q That was whose apartment -- whose home was that?

A Well, I assume that Chiappe lived there with his in-laws. Chiappe was living with his in-laws who had a store in front of the apartment.

Q How many rooms were in this house?

A Well, I don't remember exactly, but three.

Q About three rooms?

A Yes.

Q And there was about one or two bedrooms?

A I don't remember exactly right now due to the amount of time that has gone by, but I believe there were two or three rooms.

Q Now, the people who were sleeping in the room that you searched, there were sleeping accommodations for how many, two or three?

A Two.

Q What about the one-year old baby?

A Well, I believe there was a bady.

Q And the baby's crib was in that room too?

A I don't remember.

Q Now, where was it in that apartment that you spoke to Mrs. Chiappe?

A In the yard. There was a yard there.

Q Indoors or outdoors?

A It's a hard which, if I recall correctly, had a glass ceiling, but I don't remember exactly.

Q This was on -- the apartment was above the store, isn't that correct?

A No, behind.

Q And the store was owned by the in-laws of Mr. Chiappe?

A Yes. I don't know whether they rented it, but -- I don't know if they actually owned this property or rented it, but they were living there.

Q Yes. They were living there and they were

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operating the store, were they not?

A Yes.

Q And you had surveilled Mr. Chiappe being there prior to that day?

A On the previous day at approximately 9 o'clock at night the surveillance on the house was initiated.

Q Did you see Mr. Chiappe in the house?

A No. As he came out approximately 12 noon of the following day, on the 17th.

Q Did he come out of the store or the house?

A I believe -- he may have come out of the store.

Q Now, when you were speaking to Mrs. Chiappe, this was outdoors with a sort of enclosure, isn't that correct?

A In a yard.

Q And who else was present in that yard?

A Well, there were several police officers.

Q Do you remember their names?

A Well, the superior officer was Superior Officer Vitteli who has retired from the police, Emilio.

Q And a number of other police officers?

A Yes, and Chiappe's in-laws were there and Margaretta.

Q Margaretta and Mr. Chiappe were in custody at that time?

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A At that point, yes.

Q Were the in-laws also in custody at that point?

A No, they were not under arrest.

Q Now, could you tell us what the conversation was again concerning the money?

A Well, when Margaretta was questioned about her possession of this money, she indicated that a few moments before she left accompanied by Chiappe, he had given it to her so that she would carry it for him.

Q You had never seen that happen yourself, did you?

A No, because it took place inside the house.

Q And where was Mr. Chiappe at the time that Mrs. Chiappe you say made this statement?

A He was there together with the rest of us in the yard.

Q And -

MR. GALLINA: If I may have a moment, your Honor?

(Pause.)

MR. GALLINA: May I have a moment, your Honor? We just received this.

(Pause.)

MR. GALLINA: May I have a moment, your Honor?

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(Pause.)

BY MR. GALLINA:

Q The money eventually was returned, was it not?

A I don't know.

Q Do you know Federal Judge Miguel Inchausti, I-n-c-h-a-u-s-t-i?

A He was the judge that presided in the case.

Q And do you know the case number 771 of '68?

A I don't know by the number.

Q Well, have you been responsible, are you the police officer responsible for this case?

A No, it was my superior officer.

Q Were you in the case from beginning to end?

A No, I participated in the arrest. Thereafter, I no longer took part in it.

Q In the course of your duties as a police officer, you were not informed that the case had been dismissed against Mr. Chiappe?

A No. As I understand, it was in fact dismissed as to the bank robbery, but I do not know -- but actually I do believe that he was convicted forbearing false documents.

Q But inasfar as the bank robbery is concerned, you do know it was dismissed against him?

A Yes.

BY MR. GALLINA:

Q And you know that the charges were also dismissed against Mrs. Chiappi?

A I don't know whether Mrs. Chiappi was actually prosecuted, I assume she may have been prosecuted as an accessory --

Q I see --

A (Continuing) but I don't know.

Q But you don'trecall whether or not the Federal Judge has ordered the evidence that was seized returned to the defendant Chiappi and the money returned to Mrs. Chiappi-- I withdraw that question.

Do you know whether or not the Federal Judge ordered that the money be returned to Mrs. Chiappi?

A I don't know that that is a matter for the Judge.

MR. GALLINA: I have no other questions of this witness.

THE COURT: Anything further?

MR. SCHLAM: No questions.

THE COURT: Anything, Mrs. Rosner?

MS. ROSNER: Of this witness?

THE COURT: Yes.

MS. ROSNER: No.

THE COURT: Mr. Borsalino, did you ever testify at any hearing concerning the suppression of the evidence that you seized?

THE WITNESS: In Argentina?

THE COURT: Yes.

THE WITNESS: No.

THE COURT: Did you ever hear of a professor Biederman?

THE WITNESS: Peterman?

THE COURT: Biederman, Biederman.

MR. GALLINA: Dr. Biederman, they call him Dr. Biederman.

THE COURT: What does he do there, is he a lawyer down there?

MR. GALLINA: Yes.

THE WITNESS: No, I have not.

THE COURT: Did you ever hear of a lawyer by the name of Dr. Biederman?

THE WITNESS: No.

THE COURT: Before I release this witness I would like to know from you, Mr. Schlam, how did these documents come into your possession, where did you get them?

MR. SCHLAM: Your Honor, when I was in Argentina, I knew that Chiappi had been arrested for bank robbery, so we made arrangements to go to the Court and look through the file, that would be the Court file that the Argentinians maintain on the bank robbery, and during the course of my review of those files I found the documents.

THE COURT: In the file?

MR. SCHLAM: They were in the file.

THE COURT: In the file?

MR. SCHLAM: In the Court's files.

As a matter of fact, your Honor, the Judge whom we have available to testify will I think explain that the fact that those documents were in the file is proof beyond any doubt that those documents were a part of the case and were not suppressed, furthermore, that there is no such thing in any event as a suppression of evidence in Argentina.

THE COURT: Well, we will hear from the Judge, then.

I was amazed if the documents were returned how you got ahold of them.

MR. SCHLAM: They weren't returned, they weren't returned, your Honor, the documents were in the Court file.

THE COURT: I thought you would be of counsel to Mr. Schlam.

MR. SCHLAM: No, because I expect Mr. Boyne to translate anything to the best of his ability.

THE COURT: All right.

FRANCOIS CHIAPPE, called as a witness in his own behalf, having been sworn by the Clerk of the Court, testified asfollows:

THE COURT: You can see what is happening to me, I am starting to think that way.

DIRECT EXAMINATION

BY MR. GALLINA:

Q Mr. Chiappe, did you hear Deputy Commissioner or Assistant Commissioner Alberto Bosalino testify?

A Yes, sir.

Q Did you hear him testify that he had arrested you on the 17th of May, 1968?

A Yes.

Q Was that the date that he arrested you?

A No.

Q What date did he arrest you?

A The 15th.

Q And where did he arrest you?

A At 300 meters from my house.

Q Where was it that he arrested you?

A In Buenos Aires.

Q And with whom were you at the time that you were arrested, if anybody?

A With my wife.

Q Now, at the time that you were arrested, where were you taken, if any place?

A To the police department.

Q Were you searched on the street at that time?

A No.

Q You heard Officer Bosalino testify that he had taken you back to your bedroom in your inlaws home?

A Yes.

Q Is that true?

A No.

Q Did that occur that day at all?

A No.

Q Were you ever taken back to your apartment, to your bedroom of your apartment or to your inlaws apartment where you slept with your wife?

A No.

Q Now, how many police officers were there that arrested you and your wife?

A There were about, present about ten or twelve.

Q About ten or twelve.

When was the next time that you saw your wife after you were taken to the police headquarters?

A 13 or 14 days later.

Q Where was it that you saw her?

A At a prison.

Q Were you in the prison at the time?

A Yes.

Q Was she also a prisoner?

A No.

Q How many days prior to the day that she saw you was she released; do you know?

A Five or -- four, five days.

Q So that would be -- all right -- now what happened to you after you were brought to the police station? Describe it for us in detail, please.

A They searched me, they found on me $600.00 and 50 or 60,000 Argentinan Pesos. Then they put me into a jail. They asked me or they called me, they asked me, "Chiappe Francois?"

They throw me into a jail and that evening they started torturing me.

Q What did they do when you say they tortured you?

A They -- to torture means that they undress you naked, they put you on a table, they tie you up (Indicating) your arms, your legs --

MR. GALLINA: Your Honor, may the record indicate that he is spreading his arms and his legs out.

THE COURT: Spread eagle.

Q And what did they tie you to, to the table?

A Yes, yes, they tied me on the table here (Indicating) and here (Indicating).

Q And then what did they do to you?

A They wet me with -- they got me wet --

Q They made you wet?

A First they put on your mouth a pillow and on your neck something to put your neck on in order not to swallow your tongue, and that way I spent all night.

Q Now, what did they do to you specifically?

A They put electricity on me.

Q How did they do that?

A I don't know, you have your eyes covered.

Q When you say you had your eyes covered, what were they covered with?

A First they put a kind -- a kind of kerchief on your head, then they fit it in with cotton over your eyes.

Q In other words, they put on a kerchief on your eyes and stuffed cotton under it?

A Yes.

Q Then you say they wet you down; is that correct?

A Yes.

Q All right.

Now, how did they apply the electricity; do you know?

A I didn't see it, like they say in Argentina, "I didn't see it, but I felt it."

Q And what happened to you when the electricity was applied to you?

A Then they throw me into jail.

Q What happened on your body when the electricity was applied to you?

A I -- I -- I don't see, I didn't see, you cannot see the electricity. I fell down later on, I couldn't walk.

Q What happened, what, how did it feel or what happened to your body, what did you feel, your body, what did your body feel as the electricity was applied to you?

A My impression was that it was some kind of insects that was walking all over me, something like an animal, an animal.

(continued next page)

Q You felt like an animal was walking on you?

A Yes.

Q You are indicating to your chest.

For how many --

A Over all my body and my mouth, too, and my nose, and other things I cannot explain.

Q What other things did you feel that happened to your body?

A I felt like my body was dead.

Q What did they do with the pillow?

A I don't know.

Q Well, at the time thatyou were getting the electricity, what would they do with the pillow?

A They have the pillow in their hands. They were telling me to speak, or you don't speak. I said, well, I speak, I don't know. Then they put the pillow on your face. And -- andagain they started the -- they started the electricity.

Q In other words, you were given the electricity at the same time that they put the pillow over your face?

A Yes.

Q Did the pillow interfere in any way with your breathing?

A Yes.

Q What happened? Describe that for me.

A When they say you are going to faint or you're not going to be able to breathe they take off the pillow.

Q Did they take anything with water or with fluids when you were attempting to breatheafter they had taken off the pillow?

A Right after they asked the questions, and if you don't say anything, they wet you again and they apply the pillow again on you, and they and then electricity.

Q For how many days were you so tortured?

A Four or five days.

Q All right. Now, was there a time after your arrest that you were taken before a Judge?

A No. The Judge came to the police department.

Q How long after this did this occur? After how many days in custody?

A Eight days later.

Q About eight days later?

A Seven eight days.

Q Between those seven, eight days, were you allowed to communicate with anybody?

A With nobody.

Q Were you allowed to speak to your wife?

A No.

Q Were you allowed to speak to a lawyer?

A No. I was in communicado.

Q Where was it that the Judge came to see you?

A At the Police Department.

Q After the judge came to see you, was there anymore torturing?

A No.

Q Now, during the period of torturing, did there come a time that you ever gave the police permission to go to your bedroom and to look in your bedroom?

THE INTERPRETOR: Will you repeat that?

Q During the time of your torturing -- during the time of your torturing, did there come a time when you gave the police permission to go into your bedroom?

A I couldn't give them permissionto seethe apartment because the apartment was not my apartment.

Q In other words, you never gave them permission?

A No.

Q Did they ever tell you whether they had or not had searched your apartment -- withdrawn.

Did they ever tell you whether they had or had not searched your bedroom?

A My wife.

Q Did they ever tell you that they had searched your bedroom?

MR. SCHLAM: Objection, your Honor.

THE COURT: You object to it.

MR. SCHLAM: Iobject to it.

THE COURT: It's pure hearsay. It's unreliable hearsay, but I will allow it.

THE WITNESS: Yes. They told me. Because they let me see a hat and a wedding dress.

Q They let you see a what?

The police let you see what?

A A hat. They let me see a hunting jacket.

Q They let you see a hunting jacket? How did this come about?

How did this come about that they let you see a hunting jacket?

A Because they would put the hat on me and the hunting jacket in order to pass by in front of the witnesses.

Q They put them on you?

A Yes.

Q And do you know where they came from, that hunting jacket and that hat?

A From my home.

Q So that's how you knew they had searched your home; is that correct?

A Yes.

Q Now, did they --

MR. GALLINA: Could I have that passport?

Q This passport and this identification card, have you ever seen those before?

A Yes.

Q Where were they?

A I had this in the commode in my apartment.

Q You had them hidden in the commode in your apartment?

A No. I just had it in the commode.

THE COURT: He didn't say "Hidden".

MR. GALLINA: I thought a commode was a toilet. You know, you don't usually keep books in a toilet. Maybe a commode means something else. I don't understand.

MS. ROSNER: Not in that context.

MR. GALLINA: I am sorry.

Q What is a commode?

A A dresser.

Q In other words, you have that in a dresser?

A Yes.

Q All right. Ok. Did you give the police permission to go into the bedroom to take those documents?

A I told you I wasn't the owner of the house.

Q Do you know what happened to your wife while you were incarcerated or being held in communicado?

A My wife told me she was tortured.

Q Did anything physically happen to her besides being tortured where -- or any results of that torture?

A She was pregnant, a month pregnant and she lost the baby.

Q Now --

THE COURT: That was a result of the torture, of course, right?

THE WITNESS: Yes.

THE COURT: How do you know that?

THE WITNESS: I knew she was pregnant.

THE COURT: Oh. So if she hada miscarriage, it was the result of the torture?

THE WITNESS: Yes, sir.

Q When did she have the miscarriage?

A During the time she was in the Police Department.

Q While she wasbeing tortured?

THE COURT: What did the police do? Did the police punch her in the stomach, kick her?

THE WITNESS: Yes, they kicked her.

THE COURT: Sure. Why don't you ask those questions?

MR. GALLINA: Judge, I thought I might get to it, you did.

THE COURT: Oh.

MR. GALLINA: Thank you.

Q Did you see any of the marks of the torture on her?

A Yes. On the leg.

THE INTERPRETOR: He saw kick marks on the leg.

THE COURT: Of course, the bruises on the leg, induced the miscarriage.

THE WITNESS: They also kicked her in the stomach.

THE COURT: That's what I mean. Did you see the marks on the stomach, too?

THE WITNESS: No.

Q No. You were in prison?

A That was when I saw her. It was 14 days later. The marks may have gone.

Q When you saw her you were where? Where wereyou located?

A In jail.

Q What were the visiting privileges like?

THE INTERPRETOR: Visiting what?

Q What were the visiting privileges like?

A They take you down from the prison to a-- like a yard. Yes. You can touch your wife, embrace her. You can talk to her.

Q All right.

THE COURT: Now, this was in 1968, right?

THE WITNESS: Yes.

THE COURT: That was in the oldregime, the so-called liberal regime during the Allenda Regime.

MS. ROSNER: That's the wrong country, Judge.

THE COURT: I am sorry. You are absolutely right. I have the wrong country.

But this was during a democratic administration wasn't it?

This was Perrone?

MS. ROSNER: No.

THE WITNESS: No. It was General --

THE COURT: Let the witness answer.

If I want history I will go the history books. If I want testimony I will ask the witness.

THE WITNESS: No. It was the -- the head of the -- it was General Canara.

This was a representative of Government.

THE WITNESS: Milita.

THE COURT: So the same thing that happened to you in 68 happened to you in 1976 just before you were exiled?

THE WITNESS: Yes, your Honor.

THE COURT: You were exiled by Brazil?

MR. GALLINA: No, your Honor.

MR. SCHLAM: Argentina.

THE COURT: Wasn't this a Brazilian exile?

MR. SCHLAM: No. Argentina. May 27th of 76.

THE COURT: I am sorry.

THE WITNESS: From Argentina.

THE COURT: So it was the same regime in 1976 as in 1968.

THE WITNESS: It could be that the Government in 68 was a little more tolerant than today.

THE COURT: But when you were exiled from Argentina, you were tortured before you came here, is that right?

THE WITNESS: Yes.

THE INTERPRETOR: He shows the teeth broken.

THE COURT: Did they perform the same acts oftorture or substantially the same acts of torture in 1976 as they did in 1968?

THE WITNESS: No.

THE COURT: Different?

THE WITNESS: Yes.

Q Different?

THE WITNESS: I want to make sure that he was describing the 76 torture when he was --

MR. GALLINA: No, I want to make sure he's describing the torture of one regime as compared to the torture of another regime. I am sure you want the difference in tortures from the two regimes.

THE COURT: I am not interested in that. But he pointed to his teeth. I know he says they knocked his teeth out in 76. They couldn't have knocked the same teeth out in 68.

Did they knock your teeth out in 68?

THE WITNESS: No.

THE COURT: All right, go ahead, Mr. Gallina.

Q Was your wife ever brought into your presence at any time and asked where she got the money?

A No.

MR. GALLINA: I have no further questions.

THE COURT: Are you finished?

MR. GALLINA: Yes.

CROSS-EXAMINATION

BY MR. SCHLAM:

Q Mr. Chiappe, is there anything wrong with your voice?

A Yes.

Q What is wrong with it?

A I am ill. Sick.

Q In what respect?

Do you have a sore throat?

A I have some permanent condition.

Q You can speak in a normal voice when you want to,can't you?

A Sometimes yes, sometimes no.

Q You're incapable now of speaking in a normal voice; is that right?

A If you want, you can let a specialist see me.

Q No. I am asking you whether at this point --

THE COURT: I don't think that is important.

MR. SCHLAM: Ok.

Q Now, Mr. Chiappe, would you look at what has been marked as Exhibit 25, Exhibit 56, and tell us if you recognize them?

A This is Francois Chiappe.

Q That's you?

A This is Marcello Rossi.

Q Francois Rossi?

A Yes.

Q Now, was this picture in your house as of the time that you say you were arrested in May of 68?

A Yes.

Q Where was that photograph taken, incidentally?

MR. GALLINA: Your Honor, I object. No relevancy, as to where it was.

THE COURT: When it was taken.

MR. GALLINA: Where it was taken.

THE COURT: Objection sustained.

Q Where in your house wasthis picture?

A To tell you the truth, I don't know where it was, but I am sure it was home.

Q Ok. Now, would you take a look, please, at Exhibit 56, and tell us if you recognize that?

A Yes.

Q What do you recognize it to be?

A Miguel Nicoli, Mr. Francois Rossi. The other one, I know he is called John Paul, but I don't know him.

THE COURT: Mr. Schlam, I am going to confine you to the issue in this hearing .

THE COURT: The search and seizure, not the substance of what the items are, but rather how were they seized.

Q Where was it? Was it in your house at the time of your arrest?

A Yes.

Q Where? Do yourecall?

A No. I don't know.

Q Now, as of the day that you were arrested, did your wife have any money in her possession?

A No.

Q Did you during the month of May, 1968, at any time, either you or your wife have in your possession $19,000.00 inAmerican money?

MR. GALLINA: Objection.

THE COURT: Objection sustained.

It's going beyond the issue.

MR. SCHLAM: Your Honor --

THE COURT: Whether they had it in their possessin or not is immaterial. The only question is whether there was a seizure and how it occurred.

MR. SCHLAM: Well, he said his wife didn't have it in her possession.

THE COURT: All right.

Q Did you have it in your possession?

A Yes.

Q At any time did you transfer that sum of oney to your wife?

THE INTERPRETOR: That sum of money?

Q $19,000.00 in American money.

A No.

MR. GALLINA: Your Honor, I don't believe that that question was interpreted or understood by the defendant.

THE COURT: All right. Then you will bring it out on redirect.

MR. GALLINA: All right.

THE COURT: See, it's the witness that answers, not the lawyer. He may not answer it the way you would like him to answer it. You know, it happens that way.

Q Where was the $19,000 on the last occasion that you saw it?

A I don't know.

Q Was it in your apartment?

A I don't know.

Q Well, can you remember anything about the $19,000.00 from a standpoint of its location?

A No.

Q Did you ever have a discussion with your wife about the $19,000.00?

A No.

Q Now, after you -- after you were arrested, did you ever learn that the $19,000 had been returned to either you or your wife?

A The judge said it in my presence.

Q The judge told you what in your presence?

A That they were returning to my wife the $19,000.00.

THE COURT: Incidentally, did you ever bring any charges against the police who beat you up?

THE WITNESS: I complained to the judge.

THE COURT: Did you ever bring any charges against the Police?

MR. GALLINA: I object, your Honor. I think--

THE COURT: Objection overruled.

MR. GALLINA: Your Honor, may I be heard?

THE COURT: No.

THE WITNESS: I am going to answer your question, your Honor.

THE COURT: Yes.

THE WITNESS: In Argentina, if you are -- if you have the bad luck of accusing a policeman which is true, when you go out, you don't know if you're going to be alive or if you are going to live.

THE COURT: So your answer is you didn't make a complaint against the police.

MR. GALLINA: That was not the question, your Honor. Your Honor asked --

THE WITNESS: I complained.

MR. GALLINA: (Continuing) Did he complain to the police?

THE WITNESS: I complained to the judge.

THE COURT: I see. That's the only complaint you made?

THE WITNESS: Verbally, the application of electricity on me.

Q Now, you were represented by a lawyer after your arrest in this case at some time, were you not, sir?

A Yes.

Q Did you ever ask your lawyer to make a complaint about the policeman who, according to you, mistreated you?

A I want to first tell you this. At the Police

Department I never saw the lawyer.

THE COURT: When you made the complaint to the judge, weren't you fearful that the police would attempt to somehow seek revenge for that?

THE WITNESS: I tell youthis. When I complain and the judge asks me, can you remember or tell me the name of that policeman, I say, no, I don't.

Can you recognize him? No, I don't.

THE COURT: But that complaint was made in public, wasn't it?

THE WITNESS: Before Dr. Baswaldo and Dr. Baderman, who learned it later -- who learned it later.

THE COURT: Was Baderman your lawyer?

THE WITNESS: Was. First was Baswaldo, then Baderman.

THE COURT: Now I get to see things.

MR. SCHLAM: Your Honor, I don't want to belabor the examination of the money, but I think that --

THE COURT: No, I don't think--

MR. SCHLAM: I think that's about the points that I thought --

MR. GALLINA: May I ask some questions?

THE COURT: Surely.

REDIRECT EXAMINATION

BY MR. GALLINA:

Q Mr. Chiappe, were the $19,000your money?

A No.

MR. SCHLAM: I think that is opening the door, your Honor.

MR. GALLINA: That's what?

THE COURT: Well, go ahead.

Q Did you answer before to this Court that that money was your money?

A No.

Q Did your lawyer also complain to the judge with you present about your torture?

A He was when I made my complaint, but I don't remember exactly when this was because you don't present a complaint about this to the same judge that was trying the case before. You make the complaint -- you make this complaint to a judge who takes care of that case, and he appoints another judge.

Q Did that judge have a physician examine you?

A Yes.

Q In your presence, did the physician tell the judge that you had been tortured?

MR. SCHLAM: Objection, your Honor.

THE COURT: May I have that question?

(Record read.)

THE COURT: I will allow it, go ahead.

THE WITNESS: Yes.

THE COURT: Are these matters reported, the things that you said like we have a court reporter here?

THE WITNESS: No.

THE COURT: Well, that's unfortunate, isn't it? I would have ordered the minutes.

You see, I would have the Government pay for the --

MR. GALLINA: Well, your Honor --

THE COURT: Whatever rate they required.

MR. GALLINA: I would not want to rely on Mr. Chiappe's knowledge of the Court process there as to whether or not there was a reporter. There may have been a -- you're indicating a machine. Maybe there is somebody who takes it in shorthand or maybe there are summary notes made of it.

THE COURT: You were down there.

MR. GALLINA: Your Honor, I had no interest in that. I only spoke to Dr. Baderman basically on the alibi defense, which was the only reason I really went to see him. The discussion about this matter was just tangential.

THE COURT: Next question.

THE INTERPRETOR: The witness wishes to say that he saw them making some notes.

THE COURT: Will the Government please inquire to see whether any such record wasmade? I would like to get the record if it is --

MR. SCHLAM: I want to be clear. This is a record of when Mr. Chiappe was before the judge after his arrest in May of 76.

THE COURT: Yes.

Sometime in May when he complained to the judge and where a doctor talked about his injuries and what the judge said.

THE WITNESS: I complained. I complained to the judge. That's written down. The doctor came to the prison, examined me and recognized that I had been tortured.

Q All right. Now, how many days was it before you were allowed to speak to a lawyer even.

THE COURT: This has nothing to do with the case, but you go on and on and on. This is a search and seizure question.

MR. GALLINA: Yes, I realize that, your Honor.

THE COURT: I hope you do.

MR. GALLINA: Well, your Honor, I think it tangentially --

THE COURT: Of course, tangentially.

MR. GALLINA: If this had been an ordinary seizure and an ordinary arrest and none of this had taken place, I am sure they would have had no objection to allowing him to see a lawyer.

THE COURT: Well, when I think about tangentially I think about how a line on a single plane meets a sphere tangentially just that one time. It has no meaning otherwise.

MR. GALLINA: I am talking about that point, your Honor. It has relevance.

THE COURT: Yes.

About that same relevance.

Do you ever see a line in a sphere? A line is going someplace into the distance and touches the sphere at one point. That's about the relevancy. But go ahead. As I told you, I am ready to sit and wait.

Incidentally, I am suspending promptly at

4:30 or maybe before. My Court day tomorrow is going to be 10 to 4:30, with a full hour for lunch. So go to it. Go ahead.

MR. GALLINA: Is that for me?

THE COURT: That's for all the lawyers.

MR. GALLINA: Oh.

THE COURT: Take all the time you want.

MR. GALLINA: Thank you.

THE COURT: I get paid by the year, you know.

MR. GALLINA: I understand.

Q When was it that you were first allowed to see a lawyer?

A I told you, 13, 14 days after my arrest.

Q Is the fact of your arrest on the 15th of May rather than the 17th of May a matter of record in the Courts in Buenos Aires?

A I was arrested in the 15th of May. I don't know. The 15th of May because it's my birthday and I remember.

Q Were you arrested on your birthday?

A Yes, sir.

Q The police officer that was here in this court room testifying, did he torture you?

A Yes.

He was present with me when I wastied up.

Q Was he present at any other future day when you were being tortured? Did you see him?

A It's the same section. He must have been there.

Q But did they take the blindfold off you at any time?

A Afterwards, yes.

And they left me naked in a room, in a prison room.

Q Were you fed?

THE INTERPRETOR: What?

Q Were you fed?

A I was wet and it was cold.

Q No. Were you fed? Were you given food?

A No.

Q For how many days were you without food?

A They didn't give you food for four or five days. Neither did they let you drink water.

Q So you were without food or water for four or five days?

A Yes. Because if you take water, the electricity could kill you.

MR. GALLINA: I have no other questions.

THE COURT: Anything else?

MR. SCHLAM: Nothing further, your Honor.

THE COURT: You may step down. Thank you.

(Witness excused.)

MR. GALLINA: Could I have one moment, your Honor?

Your Honor inquired for the Government to get a copy of the record. I would ask your Honor not to rule until we have had a copy of the --

THE COURT: I will rule.

I want the record for other reasons. I don't care whether it's supported or not by the record.

MR. GALLINA: Well --

THE COURT: I don't mind delaying the conclusion of this trial until next week, but I have other matters on.

MR. GALLINA: I am sure we can get that in 24 hours, by tomorrow morning.

THE COURT: Yes.

MR. GALLINA: With the assistance of Dr. Niklison.

THE COURT: No. You are sure. Will you get it in 24 hours?

MR. GALLINA: No, I can't get it because I don't have the power.

THE COURT: Why are you sure?

MR. GALLINA: Because with the American Telex available from Embassy to Embassy and the fact that --

THE COURT: You mean you want to shift the burden on the Government to get it in 24 hours?

MR. GALLINA: I can't get it in 24 hours.

THE COURT: So you can't be sure.

MR. GALLINA: I am sure with the Government's assistance we can.

THE COURT: I like to call you on every statement you make.

Any further evidence?

The hearing is concluded.

I accept Judge Niklison's point of law of Argentina as the lawof Argentina concerning the rights of citizens of Argentina to be protected against unreasonable search and seizure, and his opinion asto the absence of procedure for suppressing evidence seized in violation of the rights of Argentine citizens and his version of the lawon the right to arrest.

I find the law of Argentina provides that citizens have a constitutional right against some reasonable search and seizure. The law of Argentina provides that the police may arrest any citizen or alien for the purpose of identification and hold the arrestee in custody for a period of forty-eight hours, but during the 48 hour period, they may interrogate, and it's only after that period has expired that the police have the obligation of bringing the arrestee before the Court.

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THE COURT: That Argentine law provides that a search may be conducted if it's reasonably related to identifying and that includes a search of the arrestee's premises or home.

There is no procedure for suppressing evidence and under Argentine law, evidence is admissible though obtained in violation of the rights of the citizens against whom the evidence is offered.

I find that on May 17, 1968, when the Federal Police of Argentina had information obtained from the French Government, that the defendant Francois Chiappe was charged with bank theft in France and had in their possession a composite picture based on information supplied by bank witnesses and a photograph of the defendant Chiappe supplied by the French Government, that they had reason to believe that the defendant Francois Chiappe had participated in the bank robbery in Buenos Aires.

They surveilled the home and on that day when they observed Mr. and Mrs. Chiappe outside the home, and when they asked Mr. Chiappe for his identification in accordance with Argentine law, they found a false passport on his person and a false identification card on his person. At that point, even under our standards, the police had probable cause to arrest Mr. Chiappe.

A search of his person revealed approximately $600.

They thereupon searched Mrs. Chiappe's purse and found approximately $17,000 in American dollars.

The police then searched the home, it appears it was the home of the in-laws and that the Chiappes were living with his in-laws. I don't think we need go into the somewhat abstruse theories of standing and consent to search. If we were required to apply our standards to the consent to search, I'd have grave doubts that the government had proved that the consent was knowingly and voluntarily made. But I don't reach that question.

There is nothing in this search -- and I accept the version of Mr. Borsalino, that they proceeded to the house with Mr. Chiappe's tacit consent and found the pictures that are now being offered -- there is no proof that any agents of the American government participated in or initiated or encouraged either the investigation, the surveillance, the arrest, the search, the seizure and the interrogation of Mr. Chiappe.

Mr. Chiappe may very well have been subjected to

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acts of brutality after arrest and after the search and during the interrogation period.

I find that the interrogation took place after the search and any acts of brutality are unrelated to the search and seizure here before me.

In my opinion, the reason excluded the articles seized from evidence do not apply here. As has been said -- and I think Mr. Schlam pointed out that the Catroni case indicated -- that in the case of a foreign search, the prophylactic effect of the exclusionary rule cannot possibly apply to our agents here.

I further find that there is no showing that any order of any kind, in any court of Argentina, in any way cast doubt on the admissibility of the evidence, that it would have been admissible in an Argentine Court. I make that finding only because the statement was made by Mr. Gallina that it was suppressed. Even if it were suppressed, I would not be bound by that ruling.

For all of the reasons stated, I find that all the evidence is admissible.

Now, when it comes to the testimony of Mrs. Chiappe, I will charge the jury that they will determine whether there was any coercion of any kind.

To make certain that Mr. Gallina understands

4 the ruling, I will allow evidence of coercion only if it's coercion concerning the admission, coercion surrounding the admission.

I understand the defendant denies that the admission was every made. If that's his position, then evidence of brutality and what happened in jail and so forth is inadmissible and this is stern warning because I know that Mr. Gallina's plan is to get in as much irrelevant evidence -- not even evidence -- pure hearsay -- through questions concerning brutality of the Argentine government against Mr. Chiappe and Mrs. Chiappe. If it creeps in despite my warnings, which it probably will, I'll keep advising the jury each time that Mr. Chiappe is being charged with narcotics. It is no defense to the charge that in some manner or form the Argentine government blacked his eyes, applied electrodes to his body or committed other acts of atrocity.

Now, let's go to the other hearing --

MR. GALLINA: May I, for the record, indicate certain objections?

First of all, your Honor, the search was a post-conspiracy search made months after, a couple of months after a determination of the conspiracy with

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the involvement of Mr. Chiappe.

Second of all, there was no tacit adoption by Mr. Chiappe if we accept the prosecution's version of the facts as to his wife's statements. He made no admissions that was correct. Didn't say anything at the time. There's no testimony as to that effect. He can't be bound by the post-conspiracy statement of a non-conspirator. She was never named as a co-conspirator.

In other words, the moneys were never found on him. It's learned they were taken from her. There was never any connection to him and I think the only possible argument that can be put forth to the Court showing any connection to Mr. Chiappe is through the fact that he adopted her statement and even so, then we get into the problem, of course, of in-custody admissions and the torture, etcetera. So I don't see how any --

THE COURT: Again, irrelevant. Then we get into other things and torture. Your voice drops off there.

MR. GALLINA: It's whether his adoption was a coerced adoption at that time and we get into that stuff.

THE COURT: You'll try to get into it, but I told you the limits.

MR. GALLINA: It's my understand that your ruling that the evidence of the $19,000 is only to be allowed to be admitted even though it wasn't found on the defendant Chiappe, even though he didn't adopt the money in any way and no connection can be shown between it and the conspiracy --

THE COURT: I didn't say that.

You said it. You said your Honor, you're going to admit it even though as if I made those findings. But this is your argument.

MR. GALLINA: Now outside the presence of the jury I'd like to raise my objection to the admission of that evidence at this time --

THE COURT: I would like the record to show that I didn't adopt your version. You might argue that.

MR. GALLINA: I'm sure you wouldn't.

THE COURT: Anything else you want to say for the record?

MR. GALLINA: The facts are as your Honor heard them, and I think that's what's important.

MS. ROSNER: Do you desire to hear the objections beyond the constitutional objections that might be made at the time the money was offered.

THE COURT: On your behalf? What have you got to do with this. I'll charge the jury it has nothing to do with your client.

MS. ROSNER: I know your Honor so ruled, but there's a straight hearsay objection. I get the thrust of the government's offer. They're connecting that money to this case by Mrs. Chiappe's statement that it was her husband's money and I think there would be a hearsay objection to her statement, your Honor, because she's not available as a declarant herself and she's not a co-conspirator and couldn't be under the evidence in the case -- not merely the failure to name her under the bill of particulars -- there's insufficient evidence to make her a co-conspirator. So I see no evidence --

THE COURT: I'll wait, but I'll try to give you one when you're finished.

MS. ROSNER: I think it should be excluded.

THE COURT: First you represent one client and that's how it should be. It has nothing to do with your client.

MS. ROSNER: I think I have to protect the record, Judge.

THE COURT: Whatever that means.

MR. GALLINA: I would adopt Ms. Rosner's

argument.

THE COURT: That's better. Now I'll recognize you [illegible] adopting the argument.

Under the circumstances of this case, I feel that both parties coming out of the place together hand in hand, one party having 6 or $800 in American currency -- we're talking about being in Argentina where the peso is currency -- and the other having $19,000 in currency -- husband and wife. He's standing there while she makes the statement, this money was given to me by my husband.

This is not a case where a defendant is called upon to self-incriminate and even if it were, this is a case under Argentine law and the agency was under Argentine law and there may well be a duty to speak.

But even under our law, there's a fact question for the jury as to whether she spoke for him and that's the way I'll charge the jury.

I did not say that he adopted what she said. I do say that there's enough in the evidence to create a fact question as to whether she did and upon that basis the evidence is admissible.

MR. GALLINA: For the record --

THE COURT: You're going to speakfor the record

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the last time? I allowed you to speak and made my ruling. Speak once more for the record and then forever keep quiet on this issue, will you please.

MR. GALLINA: Yes. I direct my attention to a new factual issue your Honor raised.

Your Honor said that pesos were the currency of Argentina. I'm sure I can call the police officer here and I'm certain -- or Mr. Chiappe -- and they will point out that the currency inflation in Argentina is a horrible thing and one of the greatest inflations in the world and there's money exchanges and the people attempt in Argentina to continuously keep their moneys in either American dollars or French francs --

THE COURT: I decline to re-open the hearing for that purpose. It wouldn't change my mind anyway.

Now, on the hearing -- on the statements made by Mr. Russo, I find that the examination conducted was not an in-custody examination. I don't think it's any different than if the examination were conducted at the examination desks or whatever the examining --

MR. SCHLAM: Belt, I believe --

THE COURT: -- belt, is called.

The mere fact that he was brought into a room

THE COURT: Anything further?

MR. GALLINA: No, nothing further. Thank you.

THE COURT: Anybody? You may step down. Thank you. Next witness.

MR. SCHLAM: Your Honor, this witness is named Alberto Borsalino. For the record.

THE CLERK: Raise your right hand.

ALBERTO JESUS BORSALINO, called as a witness, having been first duly sworn by the Clerk of the Court, through an interpreter, testifies as follows:

(The interpreter is Ms. Libya Clancy.)

DIRECT EXAMINATION

BY MR. SCHLAM: (Through interpreter.)

Q What is your occupation?

A Policeman.

Q In what country?

A Argentina.

Q How long have you been a policeman in Argentina?

A Twenty-two years.

Q What is your position in the Argentine Police Department today?

A Assistant Commissioner.

Q Now, I'd like to call your attention to May 17, 1968 and ask you if you were working on that day?

A Yes.

Q Where were you working?

A In the robbery and theft division.

Q I mean where, geographically, were you working?

A I was surveilling a house on Bermuda Street, 3717.

Q That's in Buenos Aires?

A Yes.

Q And on that date, did you have occasion --

MS. ROSSNER: May we have a limiting instruction as we had previously discussed, your Honor?

THE COURT: Yes. The witness is about to testify to an event that occurred, he claims, on May 17, 1968. The Government has conceeded, and also claims, that this conspiracy terminated on February 16, 1968. So we are talking about something that occurred three months after conspiracy ended. Now, a conspiracy is described as a partnership in criminal purpose. The emphasis is on partnership. In a lawful partnership, one partner is the agent for the other partners for the purpose of the conspiracy. So if one partner says something or does something during the term of the conspiracy and for the purpose of the conspiracy, then all the other partners are bound by it, even though the absent partners aren't fully aware of what the conversation is or what the activity is. Once the partnership has ended, then no one partner ca say anything that will bind anyone else who was claimed to be a member of the partnership. This evidence is offered by the Government, and if you credit the evidence, it is chargeable solely against the accused, Francois Chiappe. It has nothing whatever to do with the defendant, Miguel Russo. Is that satisfactory?

MS. ROSSNER: Yes. Thank you, Judge.

THE COURT: Mr. Gallina, is that satisfactory?

MR. GALLINA: I have no objection.

THE COURT: All right.

BY MR. SCHLAM:

Q On May 17, 1968, did you have occasion to be a part of a surveillance?

A Yes.

Q And during the course of your surveillance on that day, did you have occasion to meet Francois Chiappe?

A Yes.

Q Would you please look around the courtroom and tell us if you see Mr. Chiappe here today?

A Yes.

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Q Would you point him out, please?

A Yes. Over there.

MR. GALLINA: Concede that, your Honor.

THE COURT: Identification conceded.

(Continued on next page.)

DIRECT EXAMINATION

BY MR. SCHLAM (Cont'd):

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Q Approximately at what time on May 17, 1968 did you encounter Mr. Chiappe?

A At 12 o'clock noon.

Q Can you tell us where it was that you encountered him?

A Around the corner from the house.

Q That is in Buenos Aires, Argentina; is that correct?

A Yes.

Q Now, was Mr. Chiappe by himself or with anyone else at that time?

A He was accompanied by Marguerita Naval de DiNomo.

Q Did this woman have a relationship with Mr. Chiappe?

A Well, she was his paramour.

Q Are they married, sir?

A Not in Argentina, because she was previously married.

MR. GALLINA: Your Honor, may we approach the bench?

THE COURT: The jury is excused.

(The following occurred in the absence of the jury)

(The jury is in the jury box.)

THE COURT: The Reporter is to strike the testimony of this witness that the woman he saw accompanying Mr. Chiappe on May 17, 1968, was his paramour and not his wife and that she was formally married. Disregard all that.

The woman that came out of those premises on Bermuda Street was the wife of Francois Chiappe.

DIRECT EXAMINATION

BY MR. SCHLAM: (Cont.)

Q Mr. Borsalino, you stated that there came a time you approached Mr. Chiappe, is that correct?

A Yes.

Q And Mrs. Chiappe, am I correct?

A Yes.

Q That was at approximately noontime, May 17, 1968, am I correct?

A Yes.

Q Was Mr. Chiappe asked to identify himself?

A Yes.

Q What did he say?

A He said his name was Silvio Bianci.

Q Did he produce any documentation at that time to establish that identity for you?

A Yes. An Italian passport and identity card.

Q Take a look at what has been marked Government's exhibit 59 and Government's exhibit 60, and tell us if you recognize those two documents?

A Yes.

Q What do you recognize these two documents to be?

A The ones that Chiappe was carrying at that time which he showed to us.

Q On May 17, 1968?

A Yes.

MR. SCHLAM: We offer exhibits 59 and 60 into evidence.

THE COURT: Any objection other than those already made?

Those objections that you already made are preserved.

MR. GALLINA: I understand that. On the question of connection, I would like to have a voir dire.

THE COURT: Any other objections?

The objections are overruled, they may be marked. I will give this limiting instruction -- Do you want a limiting instruction on the use of this evidence?

MR. GALLINA: Yes, your Honor.

THE COURT: I will reserve that until

other evidence is offered, then I will give it as to the tother evidence, too.

THE CLERK: Government's exhibit 59 and Government's exhibit 60, previously marked for identification, are now marked in evidence.

(So marked in evidence.)

THE COURT: May I see them?

THE CLERK: Yes, your Honor.

Q Did you have occasion -- Shall I proceed, your Honor?

THE COURT: Please do.

Q Did you have occasion at that time to search Mr. Chiappe's person?

A Yes.

Q Can you tell us, please, what Mr. Chiappe was carrying on that day?

A A hundred American dollars, and about fifty thousand Argentine pesos.

Q At this time, was Mrs. Chiappe right there with you and Mr. Chiappe and the other police officers?

A Yes.

Q Was Mrs. Chiappe's handbag searched at that time?

A Yes.

Q Can you tell us, please, what Mrs. Chiappe's handbag contained?

A Nineteen thousand American dollars.

Q Thereafter, an still talking about May 17, 1968, did you have occasion to search Mr. Chiappe's apartment?

A May 17th?

Q May 17, 1968.

A Yes.

Q What was the address of the apartment?

A 3717 Bermudas Street.

Q That is in Buenos Aires?

A Yes.

Q While the search was being conducted, were Mr. and Mrs. Chiappe in the apartment with you and the other police officers?

A Yes.

Q Would you look please at what has been marked exhibit 25 and exhibit 56 and tell us if you recognize those two items?

A Yes.

Q Would you first tell us when you saw them for the first time?

A On May 17, 1968.

Q Where did you see them for the first time?

A In the apartment that Chiappe was living in, and more specifically, in the bedroom.

Q Were these seized in the course of the search that you were conducting in the apartment that day?

A Yes.

MR. SCHLAM: We offer these two exhibits into evidence.

THE COURT: Show them to the defendant.

MR. GALLINA: May I have a voir dire?

THE COURT: All previous objections made are preserved.

MR. GALLINA: I would like a voir dire on connection.

THE COURT: Go ahead.

VOIR DIRE EXAMINATION

BY MR. GALLINA:

Q Did you find these in the apartment yourself?

A No.

Q Do you know who found them?

A No, there were many other policemen there.

Q Did you see the man as he found them?

A We were searching the bedroom. We were all in the bedroom and they were found in the bedroom.

Q Do you know where they were found?

A I don't remember exactly.

Q When you found -- When these pictures were found in the bedroom, did you see whether or not there were other pictures in the bedroom?

A There were other pictures and other objects, as well, which we sorted out in order to later on make a report of the seizure.

MR. GALLINA: I have no further questions.

THE COURT: Any other objections?

MR. GALLINA: No.

THE COURT: Mark it.

THE CLERK: 56, previously marked for identification, now marked in evidence.

(So marked in evidence.)

DIRECT EXAMINATION

BY MR. SCHLAM: (Cont.)

Q Mr. Borsalino, in the apartment on May 17, 1968, were you present when Mrs. Chiappe was asked where she got the nineteen-thousand American dollars found in her pocket?

MR. GALLINA: Objection.

THE COURT: Overruled.

A Yes.

Q Was Mr. Chiappe present, as well?

A Yes.

Q You and other police officers were present, am

I correct?

A Yes.

Q What did Mrs. Chiappe say about the source of that money?

A That Mr. Francois Chiappe had given it to her before she left the house.

THE COURT: This witness testified this is a statement made by Mrs. Chiappe. Mr. Chiappe is not bound by what his wife said unless under all the circumstances you find that Mrs. Chiappe was authorized to speak for Mr. Chiappe with reference to the ownership of that money. Otherwise, disregard it.

Q Would you look at what has been marked exhibit 61 for identification and tell us if you recognize that?

A Yes.

Q What do you recognize it to be?

A The document and the money that were being carried by Mr. Francois Chiappe and his wife, Margarita.

Q On what day?

A May 17, 1968.

MR. SCHLAM: We offer this photograph into evidence.

THE COURT: Any objection other than those already made?

MR. GALLINA: None.

THE COURT: Let it be marked.

THE CLERK: Government's exhibit 61, previously marked for identification, now marked in evidence.

(So marked in evidence.)

THE COURT: At this time --

MR. SCHLAM: That concludes the direct examination of this witness, your Honor.

THE COURT: At this time, I would like to charge you on the use that you may put to the evidence that was just offered. This is a seizure that the witness says was made on May 17, 1968. As I indicated, after the Government --

MR. GALLINA: Your Honor, I'm sorry to interrupt, but may I approach the bench for one moment?

THE COURT: the jury may be excused.

(The jury left the courtroom.)

MR. GALLINA: To tell you the truth, when you asked me if I wanted a limiting instruction , I presumed I was going to know what the instruction was going to be before your Honor would give it.

THE COURT: I'm going to tell them that the defendant is only called upon to answer the charge in the indictment. Even if they believe this was

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evidence of another crime they shouldn't convict him for the crime charged in this indictment because of this evidence. This evidence has limited value. If from all the evidence they believe that Mr. Chiappe, on May 17, 1968, was engaged in dealing in narcotics, it had the limited use of identifying Mr. Chiappe as one who dealt in narcotics during the term of the conspiracy charged. And that it may be offered and may be used on the issue of intention to deal in narcotics.

But that if the jury found that there was insufficient evidence to convict him on the charge in the indictment, in addition to the evidence that was just offered, or considering the evidence that was just offered, then they shouldn't convict him of the charge simply because they felt he committed another crime.

MR. GALLINA: The part that troubles me is, it can be considered by them as evidence of intention to commit a narcotics crime.

THE COURT: That is right.

MR. GALLINA: Evidence seized after the --

THE COURT: All right, Mr. Gallina, you write the limiting charge you want me to give and I will give it in your language.

MR. SCHLAM: While the jury is out, we request the opportunity to be able to recall Michel Nicoli for the purpose of identifying the photograph, and that would constitute our case.

MR. GALLINA: I would stipulate to that.

THE COURT: You would stipulate if called he would identify these pictures as a picture --

MR. SCHLAM: Of himself, Francois Rossi, Francois Chiappe, and the fourth individual is a fellow by the name of Jean Paul Angelletti. It's Nicoli, Angelletti, Rossi, Chiappe, Chiappe's child, and the witness would testify it was taken on the first birthday of Chiappe's child.

THE COURT: Mrs. Rosner, you are writing out the charge for Mr. Gallina. Please do it —

MRS. ROSNER: I am not writing it out but I would like to speak to him about it.

MR. GALLINA: I would stipulate that that is what Mr. Nicoli would say.

MR. SCHLAM: That is satisfactory.

THE COURT: That is the only reason you would call him back?

MR. SCHLAM: Yes.

THE COURT: that doesn't affect you at all.

MR. SCHLAM: This picture was already identified as Francois Rossi and Francois Chiappe.

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(Pause.)

MR. GALLINA: Your Honor, the same point we were concentrating on a moment ago, what troubles me about any instruction here -- if your Honor instructs the jury that they can consider this as evidence of intent —

THE COURT: ON the issue of intent to enter into the conspiracy and deal in narcotics, yes.

MR. GALLINA: First of all, the conspiracy is over. Second of all, this evidence is not shown to have any relationship to any of the acts or this narcotic conspiracy in question.

Thirdly, the circumstances of the seizure of the money and the arrest in question surrounds itself with a separate and distinct crime. Unlike in most cases where the money is ambiguous and it can be argued to the jury that --

THE COURT: The search was based on probable cause to believe he committed bank robbery. that doesn't mean the articles seized are unrelated to the deal in narcotics.

Will you please accept my ruling? I already ruled that it was admissible. The next question is: Do you want me to give a limiting charge?

MR. GALLINA: No.

THE COURT: Nothing? All right. that doesn't

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mean you can't argue the evidence, Mr. Schlam. You can go to the jury and say he was seized with this and still in the narcotics business, and if Mr. Gallina is satisfied with that, I am, too.

MR. GALLINA: Your Honor, if it can be admitted for any purpose --

THE COURT: I would like to hear the argument directly from the coach at Counsel table.

MR. GALLINA: We don't have to have it from the coach. She has certain ideas on this situation --

THE COURT: Walking back and forth is time-consuming. Make the argument and let's get through with the argument. Once a decision is made it's made and it doesn't go on forever.

(continued next page)

(The following continued to be heard without the presence of the jury.)

MR. GALLINA: If we are going to allow this evidence in --

THE COURT: What do you mean if, I already allowed it in.

MR. GALLINA: The evidence is admitted?

THE COURT: Yes.

MR. GALLINA: It is evidence -- if it is evidence of anything, it's evidence of consciousness of guilt.

THE COURT: Consciousness of guilt? You mean he dealt in narcotics because he felt he was guilty of the charge in this indictment?

MR. GALLINA: No, your Honor.

THE COURT: I hope you didn't feed that one to him.

MR. GALLINA: The fact he left the apartment in the manner in which he did carrying the money in the bag of his wife and the money he had in his pocket instead of having it in a bank --

THE COURT: If you like to have it that way --

MR. GALLINA: That is the only academic way you can charge.

THE COURT: I decline to charge that.

Borsalino-

MR. GALLINA: I have no other.

THE COURT: I would add this to what I am going to charge --

MR. GALLINA: No.

MS. ROSNER: If I understood the instruction, you are permitting the jury to infer from this evidence that the defendant was engaged in subsequent narcotic activities after the termination of the conspiracy charge.

THE COURT: Exactly.

MS. ROSNER: I think that is an error for two reasons. The evidence in and of itself is in no way connected with narcotics activities and secondly, the circumstantial evidence surrounding these pieces of evidence indicate it came from the proceeds of a bank robbery which the Government knows about. They can't have it both ways.

THE COURT: What do you mean proceeds? Because a bank was robbed this is proceeds?

MR. GALLINA: Only --

THE COURT: Do you want your co-counsel to argue it?

MR. GALLINA: It seems to me the only circumstantial evidence is that the evidence being admitted was the proceeds of a bank robbery. As such it is unfair to permit the jury to put the defendant on the horns of a dilemna where he has to say no, I am a bank robber and the money wasn't the proceeds of narcotics. It forces him to try a case not on trial. The evidence in and of itself doesn't give rise to an inference that it came from narcotic activities. You put the man in the spot of having to admit participation in the bank robbery to expel the almost non-existent inference that that evidence came from narcotic dealings. It is unfair to require him to meet that.

THE COURT: Well, that --

MS. ROSNER: That is number one.

THE COURT: Will you please get through. You are being repetitious. I don't know if you know that or not. Those adjectives you use serve no purpose.

MS. ROSNER: Number two, it seems to me the only purpose, if your Honor admits the evidence as you have, is consciousness of guilton the following theory:

The use of a false statement may indicate an individual is attempting to avoid detection to avoid apprehension for a previously committed crime.

THE COURT: Which crime?

Borsalino-

MS. ROSNER: For the previous narcotics conspiracy.

THE COURT: How do you know that? You just talked about a bank robbery. Maybe it was --

MS. ROSNER: We are talking about permissible inferences. If your Honor has any legitimate basis --

THE COURT: When you get through with the discourse, I will tell you --

MS. ROSNER: I don't know that this is a discourse, I am attempting to make a legal argument and I don't think I am repeating myself.

THE COURT: Instead of feeding it to counsel and hearing it second-hand, I thought I would shortcut it by having you make the argument.

MS. ROSNER: It's not a shortcut if you can't get it out uninterrupted.

THE COURT: I won't sit here and listen to you all day.

MS. ROSNER: It seems to me if it has any value it may show an attempt to hide identity or assets which relate really to guilty conscience or knowledge. It certainly doesn't raise any inference of a continuing narcotic enterprise not charged against him. I think it is unfair to put him in a position of having to show, through unrelated criminal activity not charged in the indictment, that it does not --

THE COURT: Point two is the same as point one only in different language.

Indicia of narcotic dealing is false passport -- I never heard of a bank robber using a false passport to rob a bank -- false documents, and large cash carried on the person that deals in narcotics. A bank robber hides his money under floorboards, in vaults.

I am ready to charge the jury that if from all these established facts, if they find they were established, they believe that Mr. Chiappe was dealing in narcotics on November 17th, then they may use that to determine whether he knowingly and intentionally entered into the conspiracy charged in the indictment.

MR. SCHLAM: First of all --

THE COURT: There are other items here which indicate that he continued dealing in narcotics. They might infer that he knew and/or associated with Mr. Nicoli and Mr. Francois Rossi, and as far as I know the bank robbery is committed by Mr. Sarti, none of these indicate an association with Mr. Sarti.

MR. SCHLAM: Furthermore, the cash was in American currency and the bank robbed was in Argentine --

THE COURT: A slight oversight on my part. Thank you.

MR. GALLINA: May I point out that the investigation here concerning Mr. Chiappe was initiated by French police because it was alleged that the individuals that Mr. Chiappe was connected with were very well known bank robbers and they were a team that had been in France and came back and forth and they were resposible for robberies in France and in Argentina and that he was a member of a bank robbery team.

That was known by the Argentine police.

THE COURT: That is not in the case but it is most interesting.

MR. GALLINA: That is my understanding as to what the intelligence information was.

THE COURT: You think because he was charged with bank robbery that if they searched him and found narcotics on him they couldn't charge him with narcotics because he was only arrested for bank robbery?

MR. GALLINA: I don't know how that got into the case.

THE COURT: Because of your argument that there was probable cause to arrest for bank robbery therefore all the evidence of dealing in narcotics could not be introduced because of the bank robbery.

Seat the jury. If you don't want me to charge --

MR. GALLINA: I ask your Honor for an instruction.

THE COURT: Give me the language. Give me the specific language.

MR. GALLINA: I will write it down.

THE COURT: When do you expect to do that, Mr. Gallina?

MR. GALLINA: Give me a couple of minutes.

THE COURT: Sure. You want to wait until the case is over or do you want to do it now?

MR. GALLINA: Maybe over the lunch hour.

THE COURT: The case may be over before the lunch hour.

MP. SCHLAM: Will Mr. Gallina and Ms. Rosner stipulate as to their clients' dates of birth? That is in addition to the fact that Mr. Nicoli would identify the photographs. February 24, 1932 is the date of birth of Mr. Russo and May 15, 1920 for

Mr. Chiappe.

MS. ROSNER: Yes, I so stipulate.

MR. GALLINA: Yes, your Honor.

THE COURT: All right.

(Continued next page.)

THE COURT: All right, seat the jury.

(At 11:35 A.M. the jury took its place in the jury box.)

MR. SCHLAM: Incidentally, your Honor, can these exhibits be circulated to the jury?

THE COURT: Surely, give them to the Foreman.

(Mr. Schlam then handed documents to the Foreman.)

THE COURT: Are you ready to cross-examine?

MR. GALLINA: Yes, I am, your Honor.

THE COURT: I assume you are waiving cross-examination, Mrs. Rosner?

MRS. ROSNER: I have no questions, your Honor.

CROSS-EXAMINATION

BY MR. GALLINA:

Q Mr. Borsalino -- is that correct?

A Yes.

Q You were a member of what type of squad in the Police Department?

A The Robbery and Theft Division.

Q Now, the defendant as a suspect of this bank robbery came to your attention because of information provided to you or your squad by the Police Department of France; is that correct?

MR. SCHLAM: Objection, your Honor.

THE COURT: The jury may be excused.

(At 11:40 A.M. the jury left the courtroom.)

THE COURT: This is amazing, you introducing an arrest for a bank robbery.

The Government didn't offer that.

MR. GALLINA: What do we think the Government offered over here when they arrested him?

MR. SCHLAM: We didn't even mention, there wasn't any mention of an arrest.

MR. GALLINA: What am I obliged to do over here, I must explain away what the results and reasons for this were.

THE COURT: For the reasons for the arrest?

MR. GALLINA: That is correct, it is the only defense we have to possession of this money.

Your Honor has argued and has attacked --

THE COURT: You are going to prove that he stole it from the bank, that is what you want to prove?

MR. GALLINA: No, I am going to let the jury draw its own inference.

THE COURT: I can't believe it.

I beg your pardon?

MR. GALLINA: I'm going to let the jury draw its own inference.

THE COURT: You are the one who asked him whether he was arrested for bank robbery, the Government didn't ask that question.

MR. GALLINA: I realize that.

THE COURT: What is that?

MR. GALLINA: I realize that.

THE COURT: What questions are you going to ask this witness?

MR. GALLINA: I don't understand your honor, the man was arrested. I didn't bring that out. The Government decided to bring out the fact that he was arrested.

THE COURT: They did not.

MR. GALLINA: Well, I mean either I was not in this courtroom when the direct evidence was ascertained from this witness, when it was ascertained from this witness that he was arrested and he was --

THE COURT: that was outside the hearing, that was outside of the hearing of th[illegible]y.

(At this point, Mrs. Rosner conferred with Mr. Gallina.)

MR. GALLINA: All right, the search, I am sorry.

When we say a search, he was stopped on the street and taken into an apartment and his wife was searched and he was searched and his apartment was searched. That was done pursuant to an arrest --

THE COURT: If the Government had asked that question, you would move for a mistrial?

MR. GALLINA: No.

THE COURT: You wouldn't, but you moved for a mistrial --

MR. GALLINA: Would I move --

THE COURT: (Cont.) -- because the witness --

MR. GALLINA: Just now --

THE COURT: (Cont.) -- because the witness said that he wasn't married to the woman. You thought that was prejudicial, but when you asked the question whether he was arrested for bank robbery, it is not prejudicial?

MR. GALLINA: No.

THE COURT: If the Government asks the question, that is prejudicial, but when you ask the question it is not?

MR. GALLINA: Your Honor, I am in a dilemma that I have to extricate my client from.

The inference is that my client was arrested for a narcotic crime, and that is drawn clearly from the manner in which the questions were asked, and that he and his wife were seized with the proceeds of narcotic activities.

THE COURT: I want to know what your line of questioning is going to be, if you are going to start going into probable cause and the reason for the arrest, and whether there was probable cause to arrest, and I will not allow it.

MR. GALLINA: The jury has a right to rule on that, your Honor.

THE COURT: The jury has the right to rule on whether it was probable cause to make the arrests?

MR. GALLINA: No, whether the evidence that was seized at the time was seized in the manner in which the witness alleged it was seized and whether or not the evidence was truly the fruits of the search that the officer speaks of, the jury has a right to rule on that, whether the evidence that was offered against him and admitted against him --

THE COURT: Mr. Schlam, will you please answer Mr. Gallina, I can't answer him any more. I refuse to answer him any more.

[illegible]his is not a lesson in evidence that I am going to give you. I refuse to do it.

Will you please answer your adversary?

MR. SCHLAM: Yes, your Honor.

Your Honor, my understanding is that the question of probable cause is a legal question which is decided by the Court and not by the jury.

THE COURT: What did I have a hearing for, Mr. Gallina?

MR. GALLINA: Of course, we know that, I am talking about the evidence --

THE COURT: I don't think we do.

MRS. ROSNER: May we have a five-minute recess?

THE COURT: Yes.

I think it will be helpful now if you sat down with Mrs. Rosner.

(A fifteen-minute recess was then taken.)

MR. GALLINA: I will abide by your Honor's ruling.

THE COURT: (Addressing witness.) It is very important that you answer only the questions asked. If it calls for a yes or no, just say yes or no. If you can't answer it yes or no, say you can't answer it yes or no.

It is very important that you don't volunteer any information.

All right, I think we are ready now.

Are you ready to proceed?

MR. GALLINA: Yes, your Honor.

(The jury then took its place in the jury box.)

THE COURT: All ight, you may proceed, Mr. Gallina.

Q Mr. Borsalino, your squad was the Robbery and Theft Squad; is that correct?

A Yes.

Q It was not the Narcotics Squad, was it?

A No.

Q When you searched the bedroom of Mr. Chiappe, you saw no narcotics, did you?

A No.

Q Now, in 1968 who was the president of the country or the leader of the country?

MR. SCHLAM: I'm going to object to that question.

THE COURT: Objection sustained.

Q At that time that you were a police officer in 1968, the country was living under a dictatorship, wasn't it?

MR. SCHLAM: Objection, your Honor.

THE COURT: Objection sustained.

Q What time was it that you say on the 17th of May that you arrested my client?

A At 12 o'clock noon.

Q Isn't it a fact that you arrested my client on the 15th of May?

A No.

Q You allege in this courtroom that you took my client on the 17th of May to his own home or to his in-laws' home and questioned his wife there; is that correct?

A Yes.

Q But isn't it a fact that on the 15th of May you arrested him outside his house and took him to police headquarters directly?

MR. SCHLAM: Objection, your Honor.

THE COURT: I will allow it.

A It is not true.

Q You are positive you arrested him on the 17th of May?

A Yes.

Q When was it that you took him before the judge, the arraigning judge?

MR. SCHLAM: Objection, your Honor.

THE COURT: Overruled. I will allow it.

A From francois Chiappe's house he was --

THE COURT: No, strike it out as not responsive.

Did you bring him before an arraigning judge?

THE WITNESS: I did not.

Q Was he taken there?

MR. SCHLAM: Objection, your Honor.

THE COURT: Overruled.

As far as you know?

A Yes.

Q And what date was that?

A The arrest was made known to the judge on the same day as the arrest took place.

Q In fact, you are required by Argentinian law at that time to take a person to the arraigning judge within 48 hours: right?

MR. SCHLAM: I'm going to object to that.

THE COURT: I will allow it.

If you know.

A Yes.

(continued next page)

Q And isn't it a fact that you did not bring, that you and your squad did not bring the defendant to an arraigning judge for forty-eight hours?

THE COURT: Objection sustained. He already answered that.

Q You tortured --

THE COURT: Objection sustained.

Q The defendant -- did you torture --

MR. SCHLAM: Objection, your Honor.

Q (Continuing) -- and participate --

THE COURT: All right, I will allow it.

Q (Continuing) -- in extensive tortures going over the period of over close to thirteen days of the defendant Chiappe?

A No.

THE COURT: Now, that is the only question that I will allow, don't ask any other questions about torture itself. I mean, it has nothing whatsoever to do with the evidence so far in this case with seizing the articles that were admitted into evidence in this case.

Now, proceed -- and I expect you to follow the directions of the Court, Mr. Gallina.

MR. SCHLAM: Your Honor, may I ask the Court to mention to the jury that they are not to assume any fact in that question is true.

THE COURT: Of course.

Just because Mr. Gallina incorporates it in his question is no basis for you to assume that anything like that happened.

MR. GALLINA: May I ask a question of my client, Your Honor?

(At this point, Mr. Gallina conferred with the defendant Chiappe.)

BY MR. GALLINA:

Q Isn't it a fact that you took the defendant before a judge only ten days after you arrested him?

MR. SCHLAM: Objection.

THE COURT: Objection sustained.

Q Did you not in fact on the 15th of May --

THE COURT: All right, the jury may be excused.

(At 12:15 p.m. the jury left the courtroom.)

THE COURT: Mr. Gallina, this is pure gimmickry, you go to your client as if you were going to obtain information from him and then you ask the question and incorporate some fact that you had already prepared far in advance, because you asked these very questions in hearing, and you did it as if your client is feeding you information so that you might get the version of what occurred, that is, before the jury through your client.

Now, don't do that.

Now, outside the hearing of the jury you ask the questions and make a record, any record you want.

BY MR. GALLINA:

Q Isn't it a fact that on the 15th of May you took the defendant's wife to police headquarters directly without taking her back to any apartment?

A No, it is not true.

MR. GALLINA: Can we have a ruling, your Honor, can I ask that question?

THE COURT: No, you are not going to be allowed to ask any of these questions.

MR. GALLINA: Then if I am not --

THE COURT: Make the record so you can go to the court of appeals and argue it; in the event your client is convicted, let them know the kind of questions you wanted to ask.

Now, go ahead, Mr. Gallina.

You are not going to get any value out of it before the jury, these are totally irrelevant questions and have nothing to do with the seizure.

MR. GALLINA: Then there is no sense going through a charade, your Honor.

THE COURT: I think so.

I don't think you have anything.

MR. GALLINA: Yes, I do, your Honor.

THE COURT: Then put it on the record.

MR. GALLINA: The defendant was arrested on the 15th and not the 17th --

THE COURT: Do you want to testify?

MR. GALLINA: I think we will be able to prove that.

THE COURT: Mr. Gallina, I will be surprised if what you just said is true.

MR. GALLINA: I think so, your Honor.

THE COURT: That would be the first representation that you have made me in this entire trial that would have any substance.

Go ahead, ask any questions you want of this witness.

BY MR. GALLINA:

Q Mr. Borsalino, if there were court -- if there were court records or evidence showing that the defendant was arrested on the 15th of May, 1968, then you would be lying here to this courtroom; would you not?

THE COURT: Objection sustained.

Q If there were court records, Mr. Borsalino, --

THE COURT: "If there were court records," objection sustained.

Q Mr. Borsalino, do there exist, can there possibly exist, any court records showing that the defendant was arrested on the 15th of May, 1968?

THE COURT: Objection sustained, it is purely argumentative.

Q Aren't there court records --

THE COURT: Objection sustained.

Q (Continuing). -- showing --

At the time you have described the events of your seizure, was the possession of American currency allowed by Argentinan citizens or Argentinan residents?

THE COURT: I will allow that question, that is the first pertinent question you asked in all the time.

A Yes.

Q It was allowed?

A Yes.

Q During 1968 and the years preceding it and in the years after it, there was massive inflation, was there not, in Argentina?

MR. SCHLAM: Your Honor, I will object to the phrase, "massive inflation."

THE COURT: I will allow that.

MR. SCHLAM: By Arthur Burns' standards or by Mr. Carter's?

THE COURT: I know these are general questions that a witness is not supposed to understand, but, Mr. Gallina, you are asking them.

MR. GALLINA: Yes.

THE COURT: Was 1968 and the period immediately preceding it a period of inflation?

THE WITNESS: Yes, it has always existed in Argentina.

BY MR. GALLINA:

Q And wasn't it common, isn't it common and wasn't it common in Argentina for people to attempt to convert their pesos into American dollars?

A No, it is not common.

Q It is not common for them to --

THE COURT: I am not going to allow an examination before trial.

Ask about the probability of Argentinians carrying dollars in their pocketbooks like $19,000 worth, you can ask that question, and you may not ask questions about torture and argue with this witness about when he arrested the defendant and his wife and the political situation in Argentina and whether he approves the system or not. It has nothing to do with this case.

Now, are we clear on that?

MR. GALLINA: Yes, your Honor.

THE COURT: All right.

I will risk bringing the jury in.

(At 12:25 pm the jury took its place in the jury box.)

CROSS-EXAMINATION

BY MR. GALLINA (CON'T):

Q In 1968 as in the years preceding and the years afterwards, isn't it a fact that Argentina was suffering from a high inflation rate in its money?

A Yes, it is true.

Q And aren't there located in Buenos Aires many money exchanges which exchange American money to pesos and pesos to American money?

A The usual ones as there is in any other city in the world.

Q Well, when you walk along in the streets in Buenos Aires, don't you walk by -- and they have boards posted with the rates of exchange for that day, don't they, on the street?

A Yes, but relative to all the currencies in the world, not just the dollar.

Q In other words, you could walk down an ordinary business street or shopping street and you will see stores that have these -- these signs hanging in the window or they will have these boards hanging outside the doors in Buenos Aires; is that correct?

MR. SCHLAM: Objection, your Honor.

THE COURT: Objection sustained.

Q And you have been in New York City before?

A Yes.

Q And you have seen such a thing in New York City?

A No.

Q Isn't it a fact that in Buenos Aires because of the inflationary rate and in Argentina because of the inflationary rate, even in 1968 and even today people convert --

THE COURT: Objection sustained.

"Even today," we are talking about 1968, aren't we?

BY MR. GALLINA:

Q In 1968, citizens and residents of Argentina would convert their pesos because of the high inflationary rate into hard currencies or into gold and diamonds, etc.?

THE COURT: Objection sustained.

It is irrelevant to the evidence in this case.

We are talking about dollars.

Q Well, you have been -- you have been in the Robbery and Theft Division for how many years?

A I am not presently in the Robbery and Theft Division.

Q How many years were you in the Robbery and Theft?

A Ten years.

Q You have investigated many bank thefts during that period of time?

MR. SCHLAM: Objection, your Honor.

THE COURT: May I have the question?

(The Reporter repeated the question.)

THE COURT: "Many bank" what?

THE REPORTER: "Thefts."

THE COURT: "Thefts."

Objection sustained.

Q Well, during the course of your duties in the Robbery and Theft Squad, didn't you discover that many of the banks that were robbed were robbed of American currency?

A In Argentina, currency is stolen from Argentinian banks.

MR. SCHLAM: Your Honor, I am going to --

THE COURT: The jury may be excused.

Suppose we take a luncheon break at this time and come back at 1:45, a quarter of two.

(At 12:30 p.m. the jury left the courtroom.)

THE COURT: Let the record show what prompted this was Mr. Gallina's display of a periodical or magazine.

MR. GALLINA: I am going to show this to the witness, your Honor.

THE COURT: Go right ahead.

MR. SCHLAM: I would like to see it, too.

MR. GALLINA: It has a photograph of the robbery of a Buenos Aires bank and it lists a series of bank robberies from 1968 on and it has photographs of the kinds of money that were taken there, American money --

THE COURT: Go ahead, show it to him.

BY MR. GALLINA:

Q Look at that.

It is in Spanish. Would you look at that?

THE WITNESS: Let's see the picture and when this was printed.

This has to do from this year?

MR. GALLINA: Yes.

THE COURT: I assume that you are trying to prove that bank robbers in Argentina steal American money?

MR. GALLINA: No. But the fact is that this --

THE WITNESS: I want to explain.

MR. GALLINA: This gives a list.

THE WITNESS: I can, I want to explain this. On this year, this was the only bank robbery, Argentian bank robbery where dollars were stolen, but it was not, not from the assets of the bank but rather taken from the deposit boxes, safe deposit boxes belonging to patrons of the bank.

THE COURT: I see.

(At this time, E. Karr was relieved as the Official Court Reporter by G. Rudolph.)

(Continued next page)

THE COURT: I see.

MR. GALLINA: That exactly --

THE WITNESS: That is the only case that has ever been seen. It was not an armed robbery, but it was rather breaking and entering.

THE COURT: What is the next thing you want to prove?

MR. GALLINA: That's exactly the point, your Honor. That it's the safety deposit boxes of the citizens and the residents who hide their money in American money and put it in boxes.

THE COURT: What does that prove?

MR. GALLINA: What does that prove?

THE COURT: Yes.

MR. GALLINA: I -- I think it's evident what it proves.

THE COURT: No, not to me. What does it prove, Mr. Gallina? What point do you want to make?

MR. GALLINA: The connection between the money he identifies and the money from the bank robbery.

THE COURT: All right. I sustain objection to that line of questioning.

MR. GALLINA: I have no further questions.

THE COURT: You have no further questions?

MR. GALLINA: No further questions.

THE COURT: Would that complete the Government's case?

MR. SCHLAM: With the exception of jus the short stipulations, your Honor that will constitute the Government's case.

THE COURT: You'll have to return at 1:45.

MR. GALLINA: May I have your Honor one moment? My client wants me to ask a question, if I may have a moment?

THE COURT: It is a strange defense to a narcotics crime, that my defendant is not a narcotics dealer. He's a bank robber. Any other questions you want to ask of this witness?

MR. GALLINA: I have no other questions.

THE COURT: All right. So that at 1:45, I expect, after Mr. Gallina says that there will be no further questions --

MR. SCHLAM: I'll say -- I have no further questions.

THE COURT: You'll say no further questions and then -- then you'll --

MR. SCHLAM: Read the stipulations.

THE COURT: Then the Government will rest?

MR. SCHLAM: That is correct.

THE COURT: Now, will you have any case to put in?

MS. ROSSNER: No. I rest on the Government's case, your Honor.

THE COURT: All right. Now, what case are you going to put in, Mr. Gallina?

MR. GALLINA: I'm going to put in the four witnesses, your Honor. Mr. Zarate.

THE COURT: You mean, the depositions?

MR. GALLINA: Yes, your Honor.

THE COURT: Will you set up the --

MR. SCHLAM: Yes. The agent who handles that -- he was in the courtroom before. Oh, there he is. Yes. We're ready to go with that.

THE COURT: You're not offering any of the character witnesses?

MR. GALLINA: No, your Honor.

THE COURT: So that he doesn't have to eliminate anything from the tapes of the four witnesses you say you're offering? That tape is segregated, no character evidence is in those tapes, is that right?

MR. GALLINA: That is correct. We did that together.

AFTERNOON SESSION

December 1, 1976
1:45 p.m.

THE COURT: Seat the jury.

(The jury took its place in the jury box.)

THE COURT: Good afternoon.

I think we are ready to proceed.

ALBERTO JESUS BORSALINO, having been previously sworn, continued to testify as follows:

THE COURT: Mr. Gallina, do you have any further questions?

MR. GALLINA: Yes, just one or two further questions.

CROSS-EXAMINATION

BY MR. GALLINA (CON'T):

Q You said that the possession of American money is legal in Argentina; is that correct?

A Yes.

Q And there are regulations, however, which controlled the manner in which residents and citizens in Argentina could hold money other than pesos; is that correct?

A There used to be at other periods of time.

THE COURT: We are taling about 1968.

THE WITNESS: I don't remember.

Q Now, was there not a thriving black market in American money in 1968?

MR. SCHLAM: Objection, your Honor.

THE COURT: Overruled, I will allow it.

A I don't remember.

Q Well, you don't remember if it was that year?

A Precisely.

Q But you know there has been a thriving black market in American money?

MR. SCHLAM: I will object to that question, your Honor.

THE COURT: May I have the question?

MR. SCHLAM: Excuse me, Mr. Karr, will you read the question before that and the answer before that back?

(The Reporter then repeated the previous question and answer and the question following.)

THE COURT: Objection sustained.

BY MR. GALLINA:

Q When did you recall if at all a thriving black market in American money?

MR. SCHLAM: Objection, your Honor.

THE COURT: I will allow it.

A For example, last year.

Q Whenever there is a high rate of inflation in pesos, that is when you have a thriving black market in hard currency; is that correct?

THE COURT: Objection sustained, objection sustained.

Q In those periods of time such as you have just described at last year as those periods of time when there is a high rate of inflation, that is the time when there is a thriving black market in American money?

MR. SCHLAM: Objection.

THE COURT: Objection sustained.

Q Was there a high rate of inflation last year?

MR. SCHLAM: Objection, your Honor.

THE COURT: Objection sustained.

MR. GALLINA: I have no other questions.

THE COURT: Anything further?

MR. SCHLAM: Nothing, your Honor.

THE COURT: You may step down.

Thank you.

(The witness was excused.)

MR. SCHLAM: Your Honor, we have a couple of brief stipulations that the attorneys for the defendants and myself have agreed on --

THE COURT: All right.

MR. SCHLAM: (Continuing) -- which I should like to state to the jury.

the photographs.

THE COURT: All right.

The witness is back so it won't do any harm.

MR. GALLINA: Thank you, thank you, your Honor.

ALBERTO JESUS BORSALINO, having been previously sworn, continued to testify as follows:

CROSS-EXAMINATION

BY MR. GALLINA (CON'T):

Q Mr. Borsalino, do you know a club called the French Veterans Club?

A No, I am not familiar with it, I have heard about it.

Q You have heard?

Did you know that Francois Chiappe's father-in-law was the manager of the club?

MR. SCHLAM: Objection, your Honor.

THE COURT: Would you know that?

THE WITNESS: I was once told that he was the caterer that operated the catering service.

Q And you learned this in the course of your special duties?

A Yes.

Q And you learned also that many Frenchmen or French veterans of the First and Second World Wars would congregate in this club; is that right?

MR. SCHLAM: Objection, your Honor.

THE COURT: Overruled. I will allow it.

Q And that some of the people that you have identified in these photographs were persons who would also stay at the French Veterans Club; is that correct?

THE COURT: Do you know that to be so?

MR. SCHLAM: Objection, your Honor.

THE COURT: Do you know that to be so?

THE WITNESS: If I did -- I don't understand.

MR. GALLINA: Well --

THE COURT: Show in the pictures that you are talking about, you are talking about a specific picture, aren't you, Mr. Gallina?

MR. GALLINA: Yes.

BY MR. GALLINA:

Q Look at that photograph --

THE COURT: Do you know those people?

MR. GALLINA: It is Exhibit 56.

Q Do you know that those people congregated at that Veterans Club?

THE COURT: Do you know that is so?

A No.

MR. GALLINA: I have no other questions.